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Adoption Regulations Docket Room, SA-29
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**FROM:** Ethica
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**RE:** Comments on State Department Regulations on Intercountry Adoption
**State/AR-01/96**

## INTRODUCTION

*Ethica* is a nonprofit education, assistance, and advocacy group, which seeks to be an independent voice for ethical adoption practices worldwide. In order to maintain our impartiality, *Ethica* does not accept monetary donations from agencies or other child-placing entities, nor are any of our managing Board of Directors currently affiliated with adoption agencies. *Ethica* strives to develop organizational policy and recommendations based solely on the basic ethical principles that underscore best practices in adoption and speak to the best interests of children.

*Ethica* believes that ethical adoption services must include family preservation efforts, birth family counseling and advocacy, adequate pre-adoption training for adoptive parents, ethical placement practices, post-adoption services that include disruption assistance, and the fulfillment of lifelong responsibilities to adoptees and their families. The 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (the Convention) is a landmark step forward in achieving these goals, and we welcome this opportunity to comment on the proposed U.S. regulations for its implementation.

A thorough review of the proposed regulations reveals that the Department of State (the Department) has responded to many of the concerns and suggestions voiced by the adoption community. Crafting a system that simultaneously balances the needs of children and creates a regulatory mechanism is difficult at best, and requires that a delicate balance be struck between the need for regulation and the need to create a workable system that will not be unduly burdensome. The Department's effort to show this balance is evident in many places throughout the proposed regulations, and we commend the Department for its effort in this regard.

We are especially pleased to see the increased consumer protections evident in the regulations, especially the creation of the Complaint Registry. Such a system will serve the important function of providing a non-biased vehicle for parents to lodge complaints and a significant public service with its ability to make such information available to parents seeking to adopt children.

In addition, we are pleased by the evident effort to enact regulations that take into consideration the role of market forces, which can often serve to shape policy and procedure without the addition of burdensome regulation. The acknowledgment of such forces is evident in several sections of the proposed regulations, including **§96.13** regarding exempt providers. We encourage the Department to retain this important recognition.

These are only a few of the many positive aspects of the regulations that *Ethica* has observed and we gratefully acknowledge the effort the Department has expended in this regard. There are a few areas of concern that remain, and we respectfully submit the following comments for your review.

*Ethica* has identified several main issues of concern. In light of the fact that many of these issues are reflected in various sections of the proposed regulations, we have opted to group our comments by subject rather than solely by section number. These subject areas are followed by comments on particular sections.

## Child Buying and Protection

One of the foremost purposes of the Convention is to "prevent the abduction, the sale of, or traffic in children." As such, parties to the Convention have a responsibility to enact regulations that enable the fulfillment of this purpose. Contracting States are obligated to "eliminate any obstacles to its application" and to "deter all practices contrary to the objects of the Convention" (the Convention, Articles 7 and 8). The regulations, as written, fall seriously short of achieving this goal.

While we realize that this function is largely the responsibility of the country of origin under the Convention, the United States cannot fail to take into consideration its own responsibilities in the prevention of child trafficking. As the world's largest receiving nation, we must accept that the practices and policies of our adoption industry play a direct role in this problem.

While **§96.36** contains the required stipulation that an agency must have a policy to prohibit its employees or agents from giving money or other consideration as payment for a child or as an inducement to release a child for adoption, it lacks specific parameters and mechanisms for monitoring or enforcing such a prohibition.

In addition, **§96.36** expands on the types of expenses that can be paid in connection with adoption cases, leaving open the possibility that parents could receive significant amounts of cash for the payment of living expenses or prenatal costs. While we are aware of the difficult circumstances that birth parents face, and support the need for appropriate medical and counseling services for parents, the lack of specificity and regulation regarding the payment of expenses is very problematic. This expansion, coupled with the difficulty in proving that payments could serve as an inducement to release a child, could actually lead to an *increase* in the trafficking of children. Therefore, Ethica would recommend that there be no expansion from current regulations in the type of expenses that can be paid.

Enforcement

The language contained in **§96.36** is remarkably similar to the current regulatory language implementing the Immigration and Nationality Act concerning child buying. It, too, prohibits payment for the release of a child or as an inducement to release the child. In practice, however, this standard has proven virtually impossible to enforce without a confession from the birth parent. A report on the difficulty in proving child trafficking under the current standard is attached hereto and incorporated herein by reference.

Even when investigators prove that money has changed hands, they have great difficulty in proving where the money originated, which portion of it was for allowable expenses and whether the birth parent was coerced. Often all that is needed to thwart an investigation is for the birth parent to state that (s)he intended to place the child for adoption regardless of the payment received. Unfortunately, this statement is easily coached.

At the same time, there is an increase in solicitation activity in foreign countries. The increased demand from U.S. citizen parents for infants and young children and the growing competitive forces within the adoption community have led to unfortunate practices, which prey on parents living in difficult economic circumstances.

*Ethica* has heard numerous stories from adoptive parents in this regard. Families have recounted how they were picked up from the airport and driven through the countryside, where the facilitators stopped to ask people if they wanted to place their children for adoption. Other families tell of being asked to pay nannies a "gift" for caring for their children, only to later learn that the "nanny" was the child's mother.

Solicitation is also reportedly occurring on a larger scale. In one country, officials from the Immigration Service discovered that attorneys were using advertisements to offer assistance to pregnant women. The women who answered the advertisements were given prenatal care. However, if a mother later decided not to place her child for adoption, she was given a bill for the services rendered. In countries where women are living in impoverished conditions, such tactics can only be viewed as coercion.

It is vital that the Department carefully consider when, how, and by whom investigations will be done to "prevent the abduction, sale of, or traffic in children" and to ensure that the regulations provide the tools such investigators need to fulfill their responsibilities. These tools may include limitations on the way that birth parent services and expenses can be provided, a prohibition of payment of non-adoption-related expenses, a prohibition of solicitation activity, and a reasonable standard of evidence. Lacking such provisions, Section 96.36 simply applies a veneer of legality to one of the most troublesome aspects of intercountry adoption.

Birth Parent Expenses and Solicitation

*Ethica* believes that birth parents living in other countries should be provided protections that are equal to those of birth parents in the United States. Given the difficulties in enforcing protections in other countries, those protections may need to differ from those in the United States if they are to provide the same level of protection that is given to U.S. birth parents. Many have argued that the payment of

prenatal and adoption expenses for birth parents overseas should be allowed because such expenses are allowed in domestic adoptions. However, there are serious concerns about some practices regarding the payments of expenses in the United States, too, and the Department should be careful not to perpetuate those same concerns abroad. Indeed, *Ethica* believes that the concerns are so serious that the better practice would be to prohibit payment of expenses that are not directly related to the adoption. If, however, the determination is made that other types of expenses are to be allowed, then *Ethica* believes that significantly greater controls should exist with regard to such expenses.

The lack of specificity in **§96.36** regarding the payment of expenses is troubling and invites abuse. This section contains none of the safeguards or requirements normally used in domestic adoption to regulate the payment of expenses. Such protections are particularly important in that payments that are considered small by U.S. standards may be large enough by the standards of a developing country to serve as an inducement to release a child for adoption.

According to the National Adoption Information Clearinghouse, approximately[1] 46 U.S. states have statutes specifying the type of birth parent expenses a prospective adoptive family is allowed to pay. Eight states stipulate expenses that families are not allowed to pay. Other states do not specify which expenses are not allowed, but their statutes contain regulatory language that precludes the payment of any expense not expressly stated. Some states allow nothing beyond the payment of legal and/or medical services (Maryland, Delaware), while others allow payments for prenatal living expenses, counseling, and medical and legal services.

Approximately 18 states specify that payments may not be made beyond a set time or may not exceed a stated amount. Thirty-seven states have statutes requiring that an accounting of all adoption-related expenses be made to the court having jurisdiction over the adoption proceedings. Many states require court approval of expenses prior to payment. In addition, some states require that expenses be paid to the agency or provider of services and not directly to the birth parent.

Only one state (Idaho) requires the repayment of expenses if a parent decides not to place her child for adoption. A majority of states have laws stipulating that the payment of expenses *cannot obligate the parent to place the child for adoption*. This is an important protection for birth parents, as it enables them to retain the choice over placement regardless of their economic circumstances at the time of birth.

Examples of such regulatory language:

> Arizona: The court shall approve living expenses that the person has paid, unless found unreasonable. The person who wishes to pay the one thousand dollars in living expenses of a birth mother shall file an affidavit with the court signed by the birth mother verifying that the birth mother has been given written notice and that she understands that the payment of these expenses by any person does not obligate the birth mother to place the child for adoption and that a valid consent to the adoption can only be given after the child's birth without regard to any cost or expense paid by any person in connection with the adoption.

[1] The word approximately is used by NAIC to acknowledge that laws are constantly changing. Numbers were correct at the time of publication (2003).

Illinois: (d) Payment of their reasonable living expenses, as provided in this Section, shall not obligate the biological parents to place the child for adoption. In the event the biological parents choose not to place the child for adoption, the petitioners shall have no right to seek reimbursement of moneys paid to the biological parents pursuant to a court order under this Section.

Many states have also enacted statutes to control the use of intermediaries or facilitators, often by allowing only licensed agencies to act in placing a child for adoption—a policy that is compatible with the Convention's stipulation that those who provide adoption services must be accredited. An important addition to this requirement is one that makes it illegal for persons to "locate" or solicit children for adoption. Such prohibitions, included in the laws of many states, are exemplified below.

Florida: The following fees, costs, and expenses are prohibited:
a. Any fee or expense that constitutes payment for locating a minor for adoption.

Oregon: (3) No person shall charge, accept or pay or offer to charge, accept or pay a fee for locating a minor child for adoption or for locating another person to adopt a minor child

Statutes that serve to protect parents from coercion and manipulation are obviously in common use in the United States today. Despite the regulatory framework that exists in various states in the United States, it is still common to hear of abuses in the payment of expenses. Regulation, while it may limit abuses, is not able to eliminate them even in the United States. It is even more difficult to limit abuses when dealing with activity occurring in another country. Therefore, it is essential that even greater protections be offered to parents abroad, especially in light of the tremendous economic disparity between countries of origin and receiving countries implementing the Hague Convention.

It is also imperative that such regulations be easily enforced if they are to be truly effective. The only way to reasonably assure such an outcome is to implement a system in which services, rather than cash payments, are offered to birth or expectant parents. Such a system would ensure that intermediaries cannot use cash as an incentive in "locating" a child for adoption, that agencies and attorneys cannot excuse cash payments as "expenses," and that investigators have a clear mandate to follow: If cash has been exchanged, the adoption is automatically illegal. To avoid coercive counseling tactics, additional safeguards should be employed to assure that the person providing such services does not benefit financially from the adoption.

In this vein, *Ethica* respectfully recommends that **§96.36** be modified to provide clear guidance on the payment of adoption expenses and to include provisions that protect birth parents from coercive practices. While Ethica believes that payment of non-adoption-related expenses should not be allowed, if such expenses are allowed, then this section should stipulate:

- That cash payments to birth parents for any reason are prohibited;
- That medical, counseling, legal, or child welfare services to birth parents must be delivered by third parties who do not benefit financially from the decision to place the child for adoption, and that such third-party providers may not

rebate or provide anything of value to birth families or to adoption service providers;

- That the provision of services should not obligate a parent to place the child for adoption;
- That services should be provided to any birth parent who seeks such services without regard to whether the parent has a plan to place the child for adoption;
- That any third party who provides services to birth parents should do so in a transparent manner and that its operation should be open to inspection by \ local or international authorities;
- That adoptive parents should not be individually charged for such expenses.

The inclusion of such provisions would serve to prevent the sale of, or trafficking of, children and would provide investigative authorities with clear parameters by which to enforce such provisions.

**Responsibility, Supervision, and Consumer Protection**

One of the purposes of both the Convention and the Intercountry Adoption Act (IAA) is to protect the rights of, and prevent abuses against, children, birth families and adoptive parents involved in adoptions (Vol. 68, Federal Register, 54068). Mechanisms intended to serve this purpose are evident throughout the proposed regulations, and touch on diverse areas such as insurance, liability, child buying, medical and social information, and the supervision of service providers. These areas are garnering much attention from all involved parties, and remain some of the most difficult to address.

*Ethica* welcomes the clarification of the role of a primary provider, which serves to ensure that one accredited agency take the primary responsibility in a case. Such a mechanism is vital for the consumer protection purposes of the regulations. On the other hand, many adoption service providers have expressed concerns about some of the attempts to provide a chain of responsibility, arguing that their ability to closely monitor foreign service providers is difficult at best, and expressing concerns about their ability to obtain insurance coverage. *Ethica* supports the concept of vicarious liability and appreciates the need for agencies to be responsible for the actions of those with whom they choose to work in foreign countries.

However, the regulations, as proposed, do not adequately address the need for consumer protection or provide a workable framework for agency responsibility. To place our suggestions and comments in context, we offer the following points for consideration.

Consumer Protection

Adoptive parents who utilize adoption services have demanded, and are entitled to, adequate consumer protection. Historically, these protections have been lacking. Many have expressed concern over the lack of accountability for fees paid, the lack of medical and social information on referred children, the lack of adequate preparation of adoptive parents, and the willingness of agencies to continue to work with those whom they know or suspect to be engaged in illegal activity. The vast majority of

such concerns implicate foreign service providers, and thus a mechanism is needed to ensure accountability for these entities.

The primary provider vehicle (**§96.44-§96.46**) provides a mechanism to address these needs by making one entity legally and financially responsible for the adoption process. The benefit of this provision in respect to foreign supervised providers, however, is vacated by **§96.14(d)(2),** which exempts "entities accredited by other Convention countries," and §96.14(e), which also states that approved persons do not have to be supervised.

Article 9 of the Convention stipulates that adoption services (including all of the services performed in the foreign country which are included in the definition of "adoption services" in the regulations) be carried out by the Central Authority of the country, or by accredited or approved entities or persons. Therefore, *all* adoption service providers in a country that has ratified and implemented the Convention would be exempted from the supervision requirement. The exemption basically means that U.S. primary providers would be responsible only for support personnel who are not performing adoption services, such as drivers, translators, and couriers. This provision does not serve as adequate consumer protection and would do little to rectify the problems adoptive parents face in regard to accountability and responsibility.

In order to craft a mechanism that addresses the true concerns about consumer protection, it is imperative that the Department take into consideration what adoptive parents actually seek from their agencies. Adoptive families are not primarily looking for an entity that they can sue when things go wrong, as some have contended. Their goal is to avoid problems from the beginning. Many adoption service providers protest that it is unreasonable for them to be held responsible for all the activities of persons in foreign countries. However, when things go wrong as a result of the activities of persons performing services for U.S. agencies, the issue arises as to who should bear the risk of loss. Should it fall upon the adoptive family, who had no control over selecting or monitoring the behavior of the foreign person, or should it fall upon the adoption agency, who chose to work with that foreign person? Ethica believes that risk of loss should fall upon the adoption agency because that agency has greater control over the situation than does the family. Families are merely asking that adoption agencies not be able to use their lack of control over foreign providers as an excuse for poor professional conduct.

Take, for example, a parent who receives a referral of a young infant who is determined to be in reasonably good health by a qualified physician. There are no indications of developmental delay or serious health concerns. The parents accept the placement and adopt the child, only to find out some time later that the child has a genetic medical condition which was not apparent at the time of adoption. This situation is obviously not the fault of the agency or the medical provider overseas, and agencies correctly state that they should not be held unduly accountable for such a result. There is no actionable liability in this scenario, and most adoptive parents realize this. Imposing vicarious liability on agencies for the actions of their foreign service providers would not change this result: If the foreign service provider did nothing wrong and the agency did nothing wrong, there would be no liability. However, adoption service providers often use examples like this to assert that it is unreasonable for families to want to hold agencies accountable for the actions of foreign service providers.

Consider a different scenario in which a family receives the referral of a child who appears to be developmentally delayed and whose head circumference is small for his age. The agency does not ask any questions of the physician who performed the exam and does not recommend that the parents seek the advice of a medical professional in the United States. Instead, the agency refers the child as a healthy infant and discounts the concerns the parents express, or perhaps even refuses additional tests requested by the parents. This agency has not exercised due diligence in the face of obvious concerns, and there should be a way to hold it legally liable for its actions.

Concerns about due diligence also arise when agencies are aware that serious accusations have been made about a foreign service provider. Perhaps an agency hears that its overseas provider is being investigated for child trafficking or has failed to complete adoptions for other clients, resulting in thousands of dollars of lost fees. Agencies should be held accountable if they ignore such concerns and continue to accept applications and fees in a situation that could result in significant financial or emotional risk to adoptive parents. Indeed, agencies should be both vicariously responsible for the wrongful actions of their foreign service providers and liable for exercising due diligence in protecting their client's interests and in choosing service providers.

Courts have supported this principle of due diligence; for example, in wrongful adoption suits. Adoption agencies are not held responsible simply because a child has an undiagnosed medical condition if no one has done anything wrongful. Rather, agencies would be held accountable in two situations: (1) when the foreign service provider they hired has committed wrongful actions (vicarious liability), and (2) when the agency failed to to exercise ordinary care or due diligence (for example, in failing to disclose known information).

Responsibility, Supervision, and the Imbalance of Power

In an effort to protect consumer interests, the Department has issued the proposed requirement that agencies assume liability for their supervised providers overseas. In response, agencies vehemently protest their inability to "control" the actions of foreign service providers. While providing a chain of responsibility is a valid goal, it is also vital that the Department consider whether the regulations provide a viable framework in which agencies can operate.

The Department would do well to consider the true issues that affect an agency's ability to supervise foreign service providers. There is, in many cases, a marked imbalance of power at play. Most U.S. agencies contract with a foreign provider to place children. However, that often means that the foreign entity controls the number of children assigned to a particular agency, obtains all the medical reports, and demands fees up front. Agencies who demand improved service or refuse to work under such a system often find themselves without a program. Often, such problems are not apparent until the agency has already placed many adoptive parents into the program, leaving the agency vulnerable to the demands of the foreign service provider.

A former agency employee related experiences in this regard. In one case, the adoptive parents received a referral which contained a detailed lab report—a relatively unusual occurrence for the particular program. The report showed the child to be markedly anemic, and the U.S. physician retained by the parents asked for an additional blood test to rule out a serious medical condition. The foreign service

provider refused to perform the test, stating that it was the provider's belief that the child was not ill, even though none of its staff were medical doctors. The family was told to either accept the referral, or decline it and accept a new child. The family knew that if they declined the referral, the next referral would simply not have a detailed lab report attached. When the agency protested, the foreign provider threatened to remove the referrals of all the agency's clients and close the program. Well over a hundred thousand dollars in fees would have been jeopardized and the foreign provider had a waiting list of agencies wishing to work with it. In such a scenario, the agency has few, if any, good choices.

There are also significant market concerns at play. An agency that attempts to provide services that protect its clients may find itself with no overseas program. There are, unfortunately, always agencies willing to step into the void, and thus the foreign service providers have little reason to correct harmful practices. Prospective adoptive families continue to enter through the revolving door of agencies that send them straight into the hands of the persons who refused to correct service deficiencies for earlier families.

The proposed regulatory scheme does little to change this reality. There would still be no supervision of the entities that perpetuate these problems. With increased liability, agencies or persons that attempted to provide good service and advocate for consumer protection would likely withdraw from various situations, leaving the venues open for less experienced or less careful agencies to enter. This could well result in a "race to the bottom" scenario.

The only thing that would change this is the recognition of the imbalance of power and the addition of regulatory language that seeks to level the playing field. The Department should consider adding language that gives U.S. accredited providers the tools they need to effectively enact good practices. The Department should not underestimate the impact that a few carefully worded insertions could have on this problem.

For example, one of the most effective tools agencies could wield would be the timing of the disbursement of funds. In the current market reality, agencies that suggest a staggered fee schedule are severely disadvantaged because there are other agencies willing to forward full fees at the outset. While the Department is trying to rectify this by the addition of several clauses that ban contingency payments and that provide for the possibilities of refunds, the reality is that the foreign service provider is still likely to be the one who escapes responsibility for repayment of fees or lack of proper practices, while the U.S. agency is held liable.

The insertion of language stipulating that the U.S. agency cannot forward the entire fee *until the service is complete* could eliminate this problem. The agency would then have the tool it needs to encourage the foreign service provider to fulfill its responsibility, and the consumer would be afforded the intended protections. Such tools would also place the onus of due diligence on the U.S. agency, which would have fewer opportunities to deny responsibility for the actions of its foreign service providers.

Another significant and necessary addition to the regulations is a duty to report actions that are illegal under the IAA or these regulations. Substantiated reports should be made available to the public and other accredited agencies. Such an addition would protect *both* the adoptive parents and the U.S. primary provider. The addition of such language places the onus of responsibility on agencies that continue

to work with foreign service providers who have previously violated laws or regulatory provisions. Agencies would no longer be able to shield themselves from this lack of due diligence, which would significantly increase consumer protection. On the other hand, such language would also provide U.S. accredited bodies with an important tool in their attempts to gain some control over the foreign service providers. The requirement would make agencies more careful and allow them to remind foreign providers of their responsibilities and the agency's responsibility to report activity contrary to the regulation. This would help eliminate the "race to the bottom" tendency, or at least make it one of shorter duration.

*Ethica* understands that the exemption of accredited entities from supervision is designed to place the burden of regulating foreign service providers on the sending country. We also appreciate the sensitivity of using language that creates a hierarchy of U.S. and foreign accredited providers. However, it is crucial that the Department implement a regulatory scheme that seeks to address both the consumer protection needs and the need for U.S. entities to take responsibility for their actions. Failure to do so will mean a lack of any real reform in this vital area. A scheme that gives primary providers the tools needed to effectively work with foreign service providers would also alleviate a considerable amount of the concern over the ability to obtain insurance coverage. To this end, we respectfully submit the following suggestions, which illustrate one way to speak to the concerns expressed above.

(1) **Amend §96.14(d)(2)** to read:

> (2) Competent authorities and public authorities of other Convention countries.

**and**

(2) **Amend §96.14 (e)** to read:

> (e) Public bodies, competent authorities, and public authorities are not required to operate under the supervision of the primary provider.

*These changes allow governmental entities to be exempted, but requires that accredited foreign service providers be supervised.*

(3) **Delete §96.46(c)** as written.

(4) **Add §96.46(c)** to read:

> (c) The agency or person, when acting as the primary provider and using foreign supervised providers to provide adoption services in other Convention countries, is responsible:
>
> (1) To report directly to the Secretary and the Department of Homeland Security any specific instances in which there is a reasonable suspicion of a violation of the provisions of the Intercountry Adoption Act that prohibit the sale, abduction, or trafficking of children, the inducement of consents to adoption by payment or compensation of any kind, the receipt of improper financial or other gain, or the receipt of remuneration unreasonably high in relation to services rendered;
>
> (2) To report directly to the Secretary and accrediting entity any specific instances in which foreign service providers fail to fulfill their responsibilities for providing services implicated in the IAA or these regulations, including but not limited to the

provision of accurate medical and social information for the child, and the fulfillment of financial responsibilities.

(3) To exercise due diligence in determining whether to use, or continue to use, foreign services providers, and to refuse to use (or continue to use) such entities where the risks of violation of the Intercountry Adoption Act are unreasonably high; or where the risks of a supervised provider's failure to perform services is unreasonably high;

(4) To inform prospective adoptive parents, in writing, of developments in their adoption process triggering a duty to report under section (c)(1) and (2) above.

**5) Rename** the current **§96.46 (d)** as **§96.46 (e)**.

**6) Add §96.46 (d)** to read:

(d) The agency or person, when acting as the primary provider and using foreign supervised providers to provide adoption services in other Convention countries, does the following in relation to risk management:

(1) Assumes tort, contract, and other civil liability to the prospective adoptive parent(s) for (i) the foreign supervised provider's provision of the contracted adoption services and its compliance with the standards in this subpart F; (ii) the failure of the primary provider to fulfill its responsibilities for oversight as required in 96.46 (a) and (b); and (iii) the primary provider's failure to fulfill the reporting, due diligence, refusal to use, and assessment requirements of section (c), and (iv) the repayment of all fees expended either directly or indirectly to foreign service providers, and

(2) Maintains a bond, escrow account, or liability insurance in an amount sufficient to cover the risks of liability arising from its work with foreign service providers;

**7) Add §96.40 (c) (1)** to read:

(1) The agency or person ensures that no more than 15 percent of the total amount of fees paid for services in a foreign country may be submitted as a case origination fee before the provision of contracted services. The remainder of the fees shall be paid only after the services are rendered.

In regard to the insurance provisions in **§96.33**, *Ethica* supports the requirement for insurance coverage. At the same time, serious questions have been raised about the viability of obtaining insurance coverage. The inability of agencies to obtain insurance could erect serious roadblocks to the successful implementation of the Convention. Therefore, we respectfully request that the Department take all steps necessary to ensure that the issue of insurance coverage not present obstacles to the implementation of the Convention. To that end, we would request that the Department explore, if necessary, alternative means of ensuring insurance coverage through such vehicles as federal insurance or federally mandated and regulated insurance coverage.

**Accrediting Entities**

*Ethica* commends the Department on the many positive aspects of the proposed designation of accrediting entities. We applaud the addition that allows entities to

take into consideration the prior employment history of the main personnel of an agency, thus demanding accountability from those who lose their license under one name and then open another agency in another state under another name.

In addition, we were especially pleased to see that the Department has allowed itself the latitude to limit an entity's jurisdiction by geography, type of applicant, or other condition. We encourage the Department to make ample use of these types of controls to prevent setting up a system whereby accrediting entities may be placed in the position of having to compete with each other for the business of the very people they are supposed to be regulating. Such a scenario is a likely reality with a system that allows for multiple accrediting entities. Allowing only one accrediting entity or assigning agencies to accrediting entities without such entities having to compete would resolve this problem.

Accrediting entities are being placed in a position that creates heavy, and costly, responsibilities for them. Placing them in a competitive environment could lead to serious consequences as costs are lowered in order to become competitive. This might especially be true in the case of smaller accrediting entities, which don't have the advantage of having other accreditation roles with which to offset basic overhead costs.

In addition, we are particularly concerned about the heavy responsibilities for investigative activity that are being placed on accrediting entities, with stipulations that will simultaneously inhibit their ability to conduct such investigations adequately.

**§96.66** requires that accrediting entities "investigate complaints about accredited agencies and approved persons, as provided in subpart J of this part." As provided in subpart J, accrediting entities must investigate all complaints against an accredited entity. Failure to investigate properly can lead to sanctions against the accrediting entity, including removal of its designation as an approved accrediting entity.

However, **§96.8 (b)(2)** states that accrediting entities must stipulate a set total cost for providing all services during an accreditation cycle which can span three to five years. Included in that cost must be all costs necessary to cover "complaint review and investigation."

Under the proposed scheme, accrediting entities presented with a situation that required a large-scale investigation would have to cover all the fees for such investigation solely out of accreditation fees that had been collected previously.

*Ethica* understands the difficulties posed by allowing accrediting entities to assess fees for investigative activity. Under such a scenario, an agency could be required to pay significant costs for investigations for unsubstantiated complaints. However, prohibiting accrediting entities from charging for such services while simultaneously requiring that the accrediting entity be responsible for investigations ensures only that investigations will not occur. In addition, the costs of obtaining liability coverage under this scheme would be prohibitively expensive for accrediting entities.

While a Central Authority is allowed, under the Convention, to delegate its *functions* to accrediting entities, it is not allowed to delegate the *responsibility* for ensuring that children are protected. However, this is exactly the result produced by proposing a regulatory scheme that makes the adequate investigation of accredited providers virtually impossible.

It is our understanding that the Department has answered requests for financial backing for investigations by replying that the IAA prohibits such a scenario. It should be noted, however, that what the IAA actually prohibits is the use of any appropriated funds for functions carried out by accrediting entities. Therefore, the IAA only prohibits funding investigations if the Department elects to make this a responsibility of the accrediting entity. This problem could be solved by removing the responsibility for investigations from accrediting entities.

We understand the necessity for accrediting entities to assist in the processing of complaints. At the same time, complaints for the most serious issues implicated in the Convention, the IAA and these regulations; i.e. child trafficking, abduction, and fraud, would likely require extensive field investigations both in the United States and abroad. It is unlikely that any accrediting entity could effectively perform such investigations.

Therefore, the Department may wish to consider dividing the investigative functions to alleviate all of these concerns. Accrediting entities could be responsible for administrative complaints or those that involve procedural issues within the United States. The Department could retain both the responsibility and the function, in cooperation with law enforcement personnel, to investigate serious allegations of illegal or fraudulent activity. The Department could then make use of appropriated funds, if necessary, to adequately investigate improprieties and thus not place unmanageable burdens on accrediting entities.

**Additional comments on select sections**

**§96.35 Suitability of agencies and persons to provide adoption services consistent with the Convention**

**§96.35(b)(1)** should be altered to remove the word "permanently." There have been cases recently where agencies reached a plea bargain which allowed them to forfeit their license for a period of several years in a given state for serious wrongdoing. In circumstances like these, the accrediting entity should be able to determine if the offenses should result in a similar loss of accreditation for a period of time.

In addition, we would recommend the addition of language that states that consideration of previous history also be allowed if an agency, or an employee of an agency, is served notice that they will be sanctioned and then takes steps to avoid the sanction. In such cases, the sanction should be considered as executed for accreditation purposes.

For example, in several cases in recent years, deportation orders have been issued against U.S. facilitators operating in foreign countries. In a typical case, after receiving news of the impending order, the facilitator leaves the country before the order can be served. The facilitator then tells adoptive families that the deportation was a "rumor" and that s(he) left the country voluntarily—and often accompanies this story with a tale of how s(he) was victimized.

Additionally, we would ask that **§96.35 (c)(2)** be amended to include *any* employee who is convicted or being currently investigated for acts involving financial irregularities. As the regulations provide only that the information has to be produced

and can be considered when accreditation concerns, it is not unreasonable that an accrediting entity be allowed to consider the behavior of all employees.

This is particularly important in the adoption industry because even those who are not in senior financial management positions often have the access and ability to engage in serious financial irregularities. For example, a program coordinator for a particular country may not be, and likely isn't, considered a senior financial manager. Yet, consumers should feel secure that if such a person committed major fraud while in the employ of the agency, or an agency in which he or she was previously employed, that that person would not be allowed to engage in similar activities again.

Likewise, **§96.35 (c)(3) and (4)** should be amended to require the same background checks on all employees. Even those who are not "working" directly with parents and children often have access to them in the office or through agency picnics or other events.

**96.38 (a) Training requirements for social services personnel**
Agencies should be required to train *current employees* as well as newly hired employees in these matters.

**96.39 (d) Blanket waivers of liability**

Many have raised objections to this language and have sought to imply that the Department is strictly forbidding the use of any type of informed risk waiver. It is our understanding that what is being sought is an assurance that agencies cannot make families sign informed risk waivers that waive their right to hold the agency liable for almost anything the agency chooses to do. We agree that such broad waivers do not protect children or consumers.

We encourage the Department to carefully consider any changes that it is asked to make. Language that takes into consideration informed consent must be carefully worded so as not to allow agencies to call almost anything an assumed risk. It is especially vital that the Department make it clear that agencies are not allowed to ask parents to waive any of the stipulations and requirements that are set forth in the IAA or these regulations.

**96.40 Fee Policies and procedures**

**§96.40 (b)** requires agencies and persons to itemize and disclose fees, but sections **(b)(2) and (3)** require only that *total* fees for adoption expenses in the United States be declared. This section does not provide that these lump sum fees be itemized and accounted for. Failure to do so may result in some agencies declaring, as we have personally heard, that the entire agency fee is for "adoption services" and thus once it is paid, it is completely non-refundable because the provision of any service, including reviewing the application, constitutes "adoption services." This is obviously not the intent of this provision.

In addition, **§96.40 (f)** requires an itemized accounting of fees when extra fees are assessed, and **§96.46** requires that supervised providers provide detailed accounting for their fees. Therefore, one assumes that the intent is for the primary provider or any other accredited agency or person to also produce itemized and detailed accounting of its fees. Failure to clarify **§96.40 (b) (2)** and **(3)** could result in

agencies operating on a contingency basis—i.e., one lump sum payment for services—rather than on a fee-for-service basis.

We respectfully suggest that **§96.40 (b) (1)** and **(2)** be amended to require the itemized disclosure of expenses and a provision for the refund of fees for services not rendered.

In addition, **§96.40 (c)** should be clarified to provide consumers the assurance that fees paid for services not rendered *will* be refunded. Under the current language, agencies or persons could retain the right to disclose up front that all fees paid are non-refundable service fees.

### §96.41 Procedures for responding to complaints

We strongly recommend that the Department add provisions for severe penalties to be assessed against any agency violating **§96.41 (e)**.

### §96.42 Retention, preservation, and disclosure of adoption records

*Ethica* encourages the Department to amend **§96.42 (a)** to require the retention of adoption records for the same period of time that Convention records are retained; i.e., 75 years. State law will still regulate the release of the information in those records. State laws do, however, change over time and the records should be available in the years to come if the laws change.

### §96.49 Provision of medical and social information in incoming cases

**§96.49 (k)** should be amended to remove the exception for "extenuating circumstances involving the child's best interests." Similar uses of undefined "child's best interests" statements have led to agencies being able to conclude that almost anything they want is in the child's best interests. After all, isn't it better for a child not to wait one day longer than he or she must to join a new family? Therefore, the inclusion of this exception would basically render the requirement useless for its intended purpose.

### §96.54 Placement standards in outgoing cases

We strongly recommend that **§96.54 (a)** be amended to accurately reflect the subsidiarity principle that is required in the Convention and the IAA. As written, article (a) could be manipulated to ensure that any child could be placed from the United States to a foreign country before having the opportunity to be placed with a family in this country.

While we support the right to an exception for family members, the broadness of "in the case in which the birth parent(s) have identified specific adoptive parents" makes it possible for any agency or attorney who is assisting a birth parent in finding an adoptive parent to identify that adoptive parent prior to placement and thus avoid the subsidiarity principle in violation of the intended purpose of the Convention and the IAA.

If the United States subscribes to the principles of the Convention and seeks to have them apply to all other countries of origin, then it is essential that the United States apply the same principles to itself.

Adult adoptees and others have spoken eloquently of the need for efforts to place children in their country of birth whenever possible. The Department should do everything necessary to ensure that those efforts are made for U.S. children who need adoptive families.

While we recognize that in rare cases the birth parent(s) may have personal friends living abroad that they wish to place their child with, this is an exceptional circumstance and would already be covered under the stipulation for special circumstances in paragraph (a). Therefore, we recommend that **§96.54(a)** be amended to read:

**§96.54 (a)** "Except in the case of adoption by relatives or in other special circumstances accepted by the State court with jurisdiction over the case, the agency or person makes reasonable efforts to find a timely adoptive placement for the child in the United States by:"

**§96.69 Filing of complaints against accredited agencies and approved persons**

We strongly object to the requirement set forth in **§96.69 (a) (1)** that states that complaints must first be filed with the agency or person providing adoption services.

While we understand that the likely purpose of this statement was to ensure that the Complaint Registry would not be inundated with minor complaints, the Department must recognize that knowledge of serious criminal offenses should not have to be reported first to the agency or person committing the crime. In no other circumstance of which we are aware are criminals afforded the protected right to cover their tracks or destroy evidence prior to an investigation by an outside body! While we hope that such a scenario would not be a common one, it is inadvisable to mandate that all complaints first be filed with the provider. The Complaint Registry or accredited entity should have the discretion to decide if a complaint received directly involves an issue serious enough to launch an investigation.

Likewise, **§96.69 (b)** must be expanded to include others who may have knowledge of serious criminal or legal violations.

Ethica wishes to thank the Department of State for its consideration of these comments and hopes that they prove to be of some value as the Department drafts its final regulations.

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# Child Trafficking

## Why Can't the Immigration Service Prove It?

June 6, 2003

**CHILD TRAFFICKING**. The very words give pause to all concerned with international adoption, and the accusation that it could exist sparks vehement protestations on the part of adoption agencies, adoptive parents and governmental officials. No one condones the trafficking of children, and it is widely assumed that anyone actively engaged in child buying would be prosecuted to the fullest extent of the law.

In the United States, the responsibility to investigate reports or concerns regarding child trafficking falls to the former Immigration and Naturalization Service (hereinafter referred to as INS or "the Service"), now part of the Department of Homeland Security[1]. Most find great relief in the fact that in virtually every case of suspected child buying (even those in which INS makes public statements about the existence of trafficking), no evidence to support the allegation is produced and the child is allowed to immigrate on an orphan visa. Such results often lead to accusations that the investigation was unwarranted, or worse, specifically intended to unfairly target adoption service providers or adoptive parents.

Public statements may be made by those involved that no evidence of child trafficking was found. Families are relieved to hear that their child was not a victim of unscrupulous persons; agencies proudly proclaim that the issuance of visas proves their innocence, and the adoption community and its supporters call for renewed oversight and investigation into the actions of the Service. Business continues as usual and, thankfully, the children and their families—both birth and adoptive—have been protected. But have they? The law and procedures governing the investigation of child trafficking merit closer consideration.

## Applicable Law

Regulations under the Immigration and Nationality Act, (8CFR) Section 204.3 (I), read:

> **Child-buying as a ground for denial.** An orphan[2] petition must be denied under this section if the prospective adoptive parent(s) or adoptive parent(s), or a person or entity working on their behalf,[3] have given or will give money or other consideration either directly or indirectly to the child's parent(s), agent(s), other individual(s), or entity as payment for the child or as an inducement to release the child. Nothing in this paragraph shall be regarded as precluding reasonable payment for necessary activities such as administrative, court, legal, translation, and/or medical services related to the adoption proceedings.

The law seems straightforward: If the adoptive parent, or someone working on the adoptive parent's behalf, gives money or other consideration to the child's parents, except for the payment of the necessary reasonable expenses outlined in the regulation, then the petition must be denied on the grounds of child buying. Furthermore, the burden of proof in Immigration cases lies with the petitioner (the adoptive parent). If the Service determines that money has been paid, it is the responsibility of the petitioner to prove that the child is eligible for a visa and that the child was not bought. At first glance it would seem that with proper investigation and documentation, the Service could easily prove allegations of child trafficking if it did, in fact, occur.

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[1] The INS was abolished on March 1, 2003 and its functions were absorbed into the new Department of Homeland Security. The functions of the former INS are being divided into three separate bureaus. To date, it remains unclear which branch will carry the investigative responsibilities for orphan cases. Therefore, for simplicity's sake, we have chosen to refer to the entity as "INS" or "the Service".

[2] Under U.S. immigration law, an orphan is defined as a child under 16 "who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption."

[3] This would include the agency working with the parents and its overseas facilitators.

## Investigation and Documentation

Proper investigation and documentation have become major concerns in orphan cases in recent years. When INS undertakes an investigation into child buying, the adoptive family has already adopted the child overseas and the child and family are bonding emotionally. The families and their new children are placed in an emotionally charged situation. Investigations that take weeks to perform can mean that the parents either must remain in the foreign country and incur thousands of dollars in unexpected expenses, or be placed in the unthinkable position of having to return the child to an orphanage while they return home to wait.[4] All too often, a family who eventually receives a Notice of Intent to Deny (NOID) their petition finds it filled with unsubstantiated charges or undocumented evidence.

Although the Service is correct in replying that it is the burden of the petitioner to rebut the NOID with proof that the child is adoptable, it can be impossible to rebut information that is based upon supposition or is not properly documented. While the Service views a NOID as a request for more information, families are aware that failure to adequately rebut allegations in a NOID can lead to a full denial of the petition and a months-long appeal procedure.

In some cases, NOIDs have contained derogatory statements supposedly made by witnesses who are not named or whose identities and official positions were never verified. The lack of proper documentation leads one to wonder how the petitioners are supposed to contradict the supposed statements of unnamed witnesses.

Indeed, a review of appeal decisions published by the INS finds the record replete with comments to the Officer in Charge (OIC) such as:

> "The OIC makes serious allegations of impropriety on the part of [agency] without evidence offered in support of those conclusions. Just as the unproven assertions of counsel are not evidence, neither are the unsupported conclusions of the OIC."
>
> "Although the burden of proof remains upon the petitioner, the Service bears the burden of creating a meaningful, clear, and reliable record of an interview if statements made during an interview are going to be used to determine credibility."

Such lapses on the part of the INS afford its critics much ammunition in proving that the investigations are flawed and that the Service has been remiss in its duties to investigate allegations while showing sensitivity to adoptive families. At times, serious issues surrounding the orphan status of a child are relegated to secondary status because controversy over the inadequacy of an investigation becomes the primary focus.

Regardless of the fact that finding witnesses willing to testify is difficult at best in foreign countries, or that actual documentation regarding illicit activities may be nonexistent, it is the responsibility of the Service to conduct and document a case to the best of its ability. Failure to do so only undermines the credibility of the Service and its officers and leads to accusations of unfair investigations. Of course, if a thorough inquiry finds that INS is conducting investigations without cause, or is using investigations to unfairly target certain people or agencies, then INS should be held accountable. It is highly unlikely, however, that the vast majority of cases involve the unfair targeting of adoption service providers. Unfortunately, the inadequacy of the Service's investigations often leads to that conclusion.

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[4] INS is preparing to unveil a pilot program which will allow cases to be investigated before a parent travels. However, this program will be available only on a limited basis at this time.

**Proving Child Trafficking: Is the Standard of Evidence Too High?**

A further review of cases published by the Service reveals a much more worrisome problem. According to the law cited above, orphan petitions must be denied on the basis of child buying if:

1) the prospective adoptive parent(s) or adoptive parent(s), or a person or entity working on their behalf;
2) have given or will give money or other consideration;
3) either directly or indirectly to the child's parent(s), agent(s), other individual(s), or entity;
4) as payment for the child or as an inducement to release the child.

Occasionally, the Service obtains confessions from either the child's parent or the petitioner regarding payment that is not intended as reimbursement for expenses. With such a confession, INS can easily deny the case and uphold its decision on appeal, as illustrated in the following case:
http://www.immigration.gov/graphics/lawsregs/admindec3/f1/2001/NOV3001_01F1101.pdf

In the absence of a confession, however, the Service must prove that evidence exists that proves the child was bought. According to the Foreign Affairs Manual, 9 FAM 42.21 N13.7, officers must take into account the fact that some payment of expenses is allowed under the law. Officers are advised: "Investigations of child buying, therefore, should focus on concrete evidence or an admission of guilt."

Concrete evidence, which is not a recognized legal term, is also referred to as "direct evidence" in appeal decisions. Direct evidence is defined by Black's Law Dictionary as *"evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption."* Circumstantial evidence is defined by Black's as *"evidence based on inference and not on personal knowledge or observation."* An attorney asked to explain the difference between the two types of evidence states:

> "As a practical matter, direct evidence usually boils down to eyewitness testimony or an actual confession by someone personally involved in the act in question. A lot of evidence is circumstantial. It is more looking at the facts rather than having someone specifically testifying." The attorney provided an example of determining if it is raining outside to illustrate the difference. "It is direct evidence if I testify that I was outside and saw and felt the rain on me and therefore I knew it was raining outside. However, if I say that I was in a building with no windows; it was overcast with large dark clouds when I came in; I saw four people come in who were wet, had on raincoats, and were shaking open umbrellas that had water on them as they walked into the building—all of that is circumstantial evidence that it was raining outside. While all of these observations may provide strong proof that it was raining outside, none of this is considered 'direct evidence' if I didn't personally witness the rain."

Does the requirement that INS obtain either an "admission of guilt" or "concrete evidence" protect the children? A review of just one case raises serious concerns about this standard of evidence.

According to the appeal decision[5] in this case, the Officer in Charge (OIC) denied the petition based upon a finding that the child's mother sold the beneficiary (child) to an adoption

[5] Only the appeal decision of this case is available for public viewing; therefore, the facts related in this summary are drawn from the appeal decision.

facilitator. In support of the denial, the OIC relied, in part, on a signed statement of the birth mother that said she was unable to take care of her son and had given him to a woman who had come to her house to contact her about relinquishing her son for adoption. She indicated that the woman, Ms. [Y], helped her fill out forms, picked up her son, and paid her 8 million Vietnamese Dong (around $550 US). She also stated that Ms. [Y] promised her she would be paid more money after her son was on board a plane to the United States.

The investigative report done by the INS stated that the mother initially said her purpose for relinquishing the child was so that he could have a brighter future, and that she had initially told INS that she had "received no money from the facilitator who she did not remember the name or address."[sic] The report then stated that the mother persisted in providing erroneous information until a police officer advised her that she should tell the truth about the facilitator and provide a written statement if she had received money. The report then recited the details of the birth mother's statement and related that "the birth mother cried and said that if her child did not go to the United States with the adoptive father, she would have to return the money to Ms. [Y]."

Additionally, the investigation allegedly uncovered information that the chief agent of the facilitating agency admitted to Vietnamese authorities that he and his siblings were engaged in the business of buying babies for international adoptions and that many of the biological mothers who worked with the facilitator had confirmed to Vietnamese authorities that they willingly sold their babies. However, the NOID contained no evidence of these alleged confessions.

When the NOID was issued to the petitioner (adoptive father), it did not contain either the investigative report or the above referenced statement by the mother. Two days later, the petitioner submitted a letter to INS asking for copies of the evidence. On the same day, the mother gave a contradictory statement to the Vietnamese law firm representing the petitioner. When asked if she had received any money from the petitioner, the birth mother claimed that "[n]either individual nor organisation [sic] gave me any money." She also denied ever being interviewed by the police or by any other organization, domestic or foreign.

Some six weeks later, the mother made yet another statement regarding the adoption to the Vietnamese law firm. In this statement, the mother explained her family's dire economic situation and her father's rejection of her son. She states that during her pregnancy she decided to place the child for adoption and through a series of contacts was introduced to a Ms. [X], who told her "the people who adopted would also give me some financial assistance for the delivery of the baby." Through Ms. [X], she states she was introduced to Ms. [Y], who lent her money to recover her "residence registration booklet" from a pawn shop so she could obtain the baby's birth certificate. She further outlined her need for money for the birth expenses and foster care, stating that whenever she needed money she called "Ms. [X] and asked her to seek Ms. [Y]". She also states that she had received money several times from Ms. [Y] after the birth of her baby and that the total she had received was about 3 million VND. She then states that after the adoption ceremony at the Department of Justice, Ms. [Y] gave her VND 3.9 million. The mother explained that during her interview with the Vietnamese authorities she was frightened and told them that she had received money. She explains that when the attorneys later asked her whether she had received money she thought that her earlier admission was the reason she was being investigated, so she then told the lawyers she had not received any money. The mother concluded her statement by maintaining that "[if] Ms. [Y] did not give me money I would still give my child for adoption. Because I do not want to and cannot feed my child [sic]."

The petitioner submitted a response to the NOID asserting that it was vague and filled with errors, and that the OIC's conclusion is "misleading and bootstrapping and replete with indefinite references." The petitioner stated that, contrary to U.S. law, the NOID did not indicate the grounds for the intent to deny or the evidence that the Service relied on to reach its conclusions. The response also included the two subsequent statements of the mother, affidavits, and other documents. Three weeks later, the OIC denied the petition, repeating his earlier allegations and dismissing the affidavits and additional evidence submitted by the petitioner as untrustworthy.

## The Appeal Decision[6]

In its appeal decision, the Administrative Appeals Unit (AAU) determined that the OIC had failed to include the evidence used to deny the petition. The denial did not contain the alleged confessions of the "chief agent" of the facilitating agency or of the birth mothers who supposedly stated they had sold their children to the facilitator.

The appeal pointedly states that *"denial of this petition cannot be based upon the serious allegations of the OIC without evidence offered in support of those conclusions."* The appeal decision makes a convincing argument that the Service failed to properly investigate or document its sweeping allegations against the agency in question.

On the other hand, the appeal notes that the *"credibility of the birth mother is seriously injured by her inconsistencies and constantly evolving statements."* Additionally, it is noted that *"the petitioner has submitted evidence on appeal which raises serious concerns regarding the practices of [agency] and its role in the procurement of children for foreign adoption. In his affidavit, [Mr. Z], an employee or 'assistant' of Mr. [agency representative] and [agency], stated that '[u]pon completion of the [adoption] process, the adoptive parent(s) or [agency], in consideration of the economic conditions of the child's birth mother, might offer some money and/or gift as financial assistance.' Considering the impoverished conditions of the birth mothers, such payments can only create the appearance of impropriety, at best. With birth mothers living in extreme poverty, such payments or gifts might induce a parent to abandon a child for foreign adoption if the parent had expectations of a gift or prior knowledge of the potential for a monetary gift. This type of payment or 'gift' cannot be condoned and the OIC would be justified in investigating such a practice...*

*"However, in the present case, there is no **direct** evidence in the record to establish that the birth mother received such a gift from the adoptive parent, or a person or entity working on his behalf.*

*"In accordance with 8 CFR 204.3 (I), an orphan petition must be denied for "child buying" if the following elements are established:*

1. *the prospective adoptive parents(s) or adoptive parent(s), or a person or entity working on their behalf*
2. *have given or will give money or other consideration*
3. *either directly or indirectly to the child's parent(s), agents(s), other individuals(s), or entity*
4. *as payment for the child or as an inducement to release the child."*

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[6] For clarity, direct quotes from the appeal decision appear in Italics. Bold text indicates words highlighted by the author for emphasis.

The appeal then notes the exception for expenses as outlined in the law and also offers the Black's Law Dictionary definition of "inducement" as "the act or process of enticing or persuading another person to take a certain course of action."

In reference to the crucial piece of evidence, the statement by the birth mother, the appeal decides:

*"While this statement raises serious concerns regarding the adoption, this statement, by itself, does not establish that the petitioner was engaged in "child buying" as defined in the regulation. Although the birth mother indicated that she received money directly from "Ms. [Y]", there is no evidence to establish the identity of Ms. [Y] or to demonstrate that Ms. [Y] was working on behalf of the petitioner or [agency]...The birth mother's claim that the money was loaned to her to cover the expense of childbirth and foster care might be a plausible explanation for the money, considering her impoverished condition, except for the established unreliability of her testimony.* (Previously the appeal had noted that neither the OIC nor the petitioner had submitted any evidence on the identity of Ms. [Y] or her involvement in the adoption. The appeal states that *"the record is disturbingly silent as to the identity of Ms. [Y] or her connection to [agency]."*)

The appeal continues, *"Furthermore, the birth mother's statement does not specifically indicate that she accepted the money as payment for the child or as an inducement to release the child. The birth mother began her statement by unequivocally expressing her inability to care for the child due to her economic hardship. Although one might conclude or infer that the birth mother was induced by the payment to give up her son for adoption, there is no evidence that the money was paid by the adoptive parent, or a person or entity working on his behalf. Without this critical element, there is no basis to find that the birth mother was induced to give up her child. This petition may not be denied based on inferences or conclusions that are not supported by the record."*

In subsequent sections, the appeal states, *"The matter will be remanded to the OIC so that the record may be supplemented to address the unresolved issues. First, the OIC should provide evidence to establish whether Ms. [Y] was an agent of [agency], and ultimately, of the petitioner. Second, the OIC should supplement the record with evidence that the money received by the birth mother was a payment for the child or an inducement to the birth mother to give up the child...*

*"The OIC is also reminded that any investigation of child-buying should focus on concrete evidence of the alleged child-buying or an admission of guilt."*

Was the decision of the appeal unit correct? It is undoubtedly true that the record did not meet the standard of "direct evidence" and that the OIC seriously damaged his own case. However, the decision also raises the serious question as to what evidence **would** suffice to support the allegation.

**Asking the Difficult Questions**

The decision in the above referenced case states that the OIC must provide concrete or direct evidence that Ms. [Y] was working for [the agency], and thus the petitioner; and that the payment the mother received was a payment for the child or an inducement to relinquish the child. This requirement raises questions:

**What would prove that Ms. [Y] worked for the adoption facilitator?** Short of a confession that they did indeed work together or, in its absence, an employment contract or record of financial transactions—both very unlikely to be available in this situation—is there anything that would provide concrete evidence of a link between the two entities?

**What would prove that the money received by the child's mother was a payment for the child or an inducement to relinquish the child?** In the absence of a confession by the mother that she had never intended to place her child for adoption before she was offered payment, or that the money was not meant to cover expenses, is there any other type of evidence that could be used to prove this?

The record contains the fact that the facilitator openly stated that they often offered birth mothers money after an adoption, and the birth mother stated that she received approximately $500 US from Ms. [Y]. While the statute provides for the "reasonable payment for necessary activities such as administrative, court, legal, translation, and/or medical services related to the adoption proceedings," there is nothing in the record that indicates that the money received by the mother was for such expenses. It is, in fact, in the petitioner's best interest not to comment on the payment at all because if the Service could not prove that the "*enigmatic Ms. [Y]*" worked on his behalf then there was nothing to tie the petitioner to the payments and thus no need to clear up this troublesome detail. It should be noted, however, that generally the adoptive parents pay fees which cover administrative, court, legal and translation expenses, and the only medical service generally related to the adoption proceedings is the medical exam required by the U.S. Embassy. In addition, the World Bank[7] reported that in 2001 the **annual** per capita income in Viet Nam was $410, which means that the mother received approximately 125% of the annual per capita income. By contrast, in the United States, the per capita income for 2001 was $34,870, which means that a U.S. birth mother receiving an equivalent payment for expenses would be allotted $43,587. Yet this type of evidence was not deemed sufficient to prove that the mother was paid for the child or received an inducement to relinquish her child.

Short of a confession, it is hard to fathom what kind of direct evidence the OIC could possibly unearth to support the charge of child buying. Indeed, under this interpretation of the law, it would seem that anyone could traffic in children with impunity provided that they a) hired a "runner" or other non-employee to deliver the cash or contact the birth mothers; and b) the birth mother states that she intended to place the child irrespective of the payment she received. This statement is one that a mother can easily be coached to make.

This troubling case highlights the extreme difficulty in producing direct evidence to prove child buying. Does this standard protect children, or their families, from being victimized? While the statute itself seems to set a reasonable standard, the way that it is interpreted leaves children and their families open to victimization. A Binding Interim Decision which mandates this interpretation could not be located. In the absence of such a decision, what compelled the government to interpret the statute in this manner? Should the interpretation be adjusted?

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[7] Data drawn from World Bank Reports: http://www.worldbank.org/data/databytopic/GNIPC.pdf

It is incumbent upon everyone involved in adoption, from policy makers to adoptive families, to ponder these questions. Often, investigations done by the Service are soundly denounced. Demands are made for the Service to provide solid evidence to support its accusations, to treat birth parents and adoptive parents with respect and sensitivity, and to complete investigations quickly and under intense pressure from the families, the agencies, the public, and governmental officials.

Yes, we must demand that INS take care to properly investigate cases, and it should do so with cultural sensitivity to the parties involved. However, are we asking INS officers to prove the unprovable? Are we asking them to be culturally sensitive to mothers while simultaneously stating that the only evidence that will suffice is a confession, which would require intensive questioning? Are we asking the impossible when interpretation of the law demands both that INS protect the children **and** meet an improbable standard of evidence?

Unfortunately, the questions do not end when the child comes home to its adoptive family. Are we—adoption agencies, adoptive parents, and government officials—comfortable with the ramifications of this type of policy? Who will take responsibility if a birth parent from another country attempts to reclaim her child, stating that she admitted she was paid for her child but no one considered it child buying? If INS continues to be placed in the position of undertaking pointless, unpopular investigations and chooses to stop investigating at all, will the Service then be held accountable if a child is later found to have been bought? Then again, if INS continues to conduct investigations without results, will the Service be supported for its efforts (provided investigations are conducted and documented diligently) even when it can't prove trafficking?

Even more importantly, will we be able to answer the questions of the **children** when they reach adolescence and adulthood? Are we placing adoptive families in the untenable position of having to explain why this is the standard of evidence that has been adopted to "protect" the children? Will adoptive parents be able to explain why the equivalent of $43,000 was not too much for expenses? Can we even begin to imagine that an adoptee would be more convinced by the argument that there was nothing "concrete" to prove inducement than he would be by the fact that his "birth mother cried and said that if her child did not go to the United States with the adoptive father, she would have to return the money"?

**Protecting the Children**

These serious issues need to be debated and addressed. While the implementation of the Hague Convention will transfer the responsibility for determining a child's orphan status to the foreign country, the Convention will not apply to non-Hague countries, nor will it necessarily alleviate the responsibility of INS to investigate suspicions of child trafficking. Efforts to adjudicate orphan status before a family travels to adopt a child are also underway, but the current standard of evidence would seem to apply unless a different standard is formulated and approved for those cases. Additionally, it is imperative that governmental advocates ask themselves whether the advocacy services they provide serve to protect both the interests of the children and families *and* the spirit and letter of the law that prohibits child buying.

In the meantime, it must become clear that everyone involved in a child's adoption must play a role in protecting the children. Adoption agencies bear a solemn responsibility to ensure that their overseas employees or agents are trained in proper adoption procedures and are expressly forbidden from paying birth parents for their children, or using money to induce families to relinquish their children. It should be pointed out that inducement is not as likely to be an issue if adoption professionals do not go looking for children. The most

reputable programs have policies that prohibit their agents from seeking out children to adopt and that provide services only if the parents contact the orphanage or officials of their own accord. A further layer of protection is added when the person who counsels the parent and accepts a relinquishment is not an agent of any agency or facilitator who places children for adoption.

In addition, when concerns are raised by Immigration officials regarding the activities of an employee or facilitator, it is vital that agencies thoroughly investigate the situation and be willing to ask the difficult questions. Every agency is vulnerable to becoming entwined in a difficult situation. The true measure of an agency is not whether its families have ever been affected by concerns, but how the agency responded to the situation. Was it willing to investigate its practices, and to honestly admit where mistakes were made? Is it committed to strengthening the protections for children? Do the agency's explanations satisfy the core questions regarding the children's origins, or does the agency rely on the fact that the family was issued a visa to excuse the situation?

Adoptive parents, too, must work diligently to ensure, to the best of their ability, that the agencies they hire are practicing ethically. Families must inquire about an agency's practices in acquiring children, its policies on payment of expenses, and what safeguards the agency employs to protect children. Too, families must be willing to ask themselves if they are overlooking "red flags" in order to justify working with an agency that is promising to provide a younger child or a faster adoption than is possible with another agency. If an agency has experienced difficulties, are the adoptive parents looking the other way instead of obtaining public copies of appeal decisions that could shed light on an agency's actions? Adoptive parents are all too often victims of unscrupulous adoption agencies or facilitators. It is imperative, however, that they accept their portion of the responsibility to diligently ascertain that they are hiring ethical providers. Doing so may save them immeasurable heartbreak, not only during the present but also in answering their child's questions in the years to come.

Yes, everyone involved plays a role in protecting the children. But in the long run, placing significant child protection responsibilities on parents who are rendered emotionally vulnerable by their desire to parent and on professionals who have concerns about keeping their agencies financially viable is an unworkable solution. A new solution must be found, and soon. In the meantime, it is imperative that everyone continues to ask: Is anyone protecting the children?

**TO:** U.S. Department of State
CA/OCS/PRI
Adoption Regulations Docket Room, SA-29
2201 C St. NW
Washington, DC 20520



**FROM:** Ethica, Inc.
1116 W. 7th St.
Columbia, TN 38401
(931) 840-4565

**RE:** Comments on State Department Regulations on Intercountry Adoption
State/AR-01/96

***These comments from the adoption community were collected online by Ethica, a nonprofit education, assistance and advocacy group, at www.ethicanet.org. Except where otherwise noted, comments are from adoptive parents.***

## § 96.34 Compensation

**Comments from adoptive parents:**

This consideration of compensation is extremely important. We were urged to provide $60 for this or that our entire visit, either in direct money or an expensive gift. Then there was the tire. We had to buy a new tire for the truck which brought our son—$ 200. We were expected to buy dinner for the agency's rep, her husband and her child each evening we were in the town where our son was. Thank you for these provisions.

Set fees should be required from our government.

Agency should list all fees up front, including what is paid separately to them and to attorneys or agents in the foreign country.

Still too vague and inconsistent.

I was surprised at how well thought out this section is. I especially appreciate that a clear distinction is drawn between practices that provide financial incentives to birth parents to place their children for adoption and fair reimbursement to lawyers and care providers for legitimate work in finalizing the adoption and caring for the child during the process. It is vitally important that the U.S. not follow the dubious line of reasoning espoused by groups such as UNICEF who repeatedly imply that even legitimate payments for legal services or health care are grounds for charges of "baby selling."

Like the idea that facilitators are salaried employees. But still sounds pretty vague. Who's to say that a more prolific "provider" just wouldn't earn a higher "salary" than someone who does not offer as many referrals to the agency? It seems that it would be pretty easy to make it a pay-per-child thing. Also, curious who/what/how these reasonable salaries would be determined.

I like the concepts behind this section, but it lacks definition. Particularly, it fails to state who will determine and what exactly constitutes fees, wages and salaries that are

"unreasonably high in relation to the services actually rendered." This needs to made unquestionably clear.

I agree with this idea of compensation. I am not sure how it would affect the agency, however reducing the "quantity" aspect and encouraging a "quality" component would definitely serve the adoptive family well. The distinction should be made clear to prospective parents about compensation in "nonprofits," as exorbitant salaries can be disguised.

96.34(a) This is great! It will reduce incentive to put quantity ahead of quality of adoptions.

96.34(d): "Unreasonably high" needs further clarification.

Eliminate agencies. Do-it-yourself adoption is the way to go. The fees need to go to the local orphanages. Translations should be done overseas. Speedy adoption should be made available locally. Agencies are the worst. They cost so much money and the way they operate is often unethical. Eliminate the need for an agency! Make it simple. Charge a visitation fee at each orphanage. Make adoption open. No referrals. Go visit the orphanage, meet with the director and select a child. Present short dossier in court, INS forms, home study, birth certificates, marriage license, passport, drivers license, lease or deed to home. That is all you need. Stop the overkill. Lessen the burdens. Make a child *very happy*! Make it easy for legally orphaned children to get a home and a family.

96.34-I would suggest that in addition to normal and customary wages for employees, there be no bonus money awarded for work done, children placed, etc. Do the fees for service not constitute incentive fees? This needs to be clearly defined. Otherwise, it will end up being manipulated into fees per child brought in, etc.

96.34 (d) and (e) are good and need to be left in. Wages/fees/salaries should be somewhat uniform. If all are providing like services, are nonprofit and working in the same counties, countries, etc., they should be paying employees and issuing fees that are reasonably alike.

I agree with the proposed compensation standards, as stated.

Agencies should compensate employees or contractors at fair wages per standard of living. Fees for legal services should be regulated nationally.

The move to make these arrangements more transparent is great. Right now, adoptive parents basically drop money down a black hole.

**Comments from birth parents:**

Agencies must disclose, in reasonable detail, all fees, including refund procedures and policies.

Keep everything open to all members of the triad. We need people that are willing to help once the child given up for adoption turns 21 years old. The truth will set us free.

## § 96.35 Suitability of agencies and persons to provide adoption services consistent with the Convention

**Comments from adoptive parents:**

Information should be made available to the public of any problems or law breaking the agency has been involved in in the past or present. Any agency that has had more than three complaints/lawsuits filed against it should not be allowed to do adoptions. *Agencies must travel to the foreign country to check on cases and persons they are working with.*

Exceptional.

What previous history? Who's been keeping track? Many families that have tried to make complaints have been brushed aside by state/fed regulators up till now. Agencies have threatened families with court action if they attempt to file complaints. Stricter enforcement by a *central* agency and accountability would be nice.

It is vitally important that licensed agencies are held to the highest standards, including background checks. Previous history should definitely be a consideration.

All very good.

I really like this entire section. If properly implemented and enforced, it would eliminate a sizable number of bad providers currently in business. Like most things, the devil is in the details here and it would all seem to hinge on who becomes the accrediting body.

I agree with this section, as it will only benefit the adoptive family and allow criteria for adoptive parents to judge the agencies' ethical business practices in the working with children and families. I also think it should not only include those that work directly with the agency and families, but also those that work indirectly—facilitators, for example.

Agencies that have had problems in one state can set up in another. There must be more mandated regulation and a national database so that agencies that have had serious problems or who have lost their licenses suffer sanctions. Otherwise abuses will continue.

Many state licensing administrations are highly problematic. Complaints received in many states are not kept on file. How will the accrediting entities know about possible written complaints? Will former clients be allowed to send their complaint to the accrediting entities during the accreditation process for review? State licensing of adoption entities is a joke in most states. Little action is ever taken against corrupt adoption professionals. There should be a statement preventing accrediting bodies from approving agencies/providers with any infractions listed here. There should be no second chances where placement of children is concerned.

Agencies need to give full disclosure on any complaints, how those complaints were met and what changes the agency has made since a complaint was made.

Eliminate agencies. Strive for easy do-it-yourself open adoption. Make it quick and easy to adopt a legally abandoned child. Agencies are the worst! I know—I was charged 10K to adopt a kid that was being adopted by another family! Trust me, adoption agencies need to be eliminated! *They give adoption a bad name*. Lots of bait and switch. The fees to investigate children need to go to the orphanages and the locals. Legal and medical clearance could be funded for an entire orphanage of kids for 10K. Take the agents out of the deal.

This is good. There should be a central location to check real references on an agency/facilitator. As a prospective adoptive parent, there is nowhere to look to find out if a given agency is on the up and up. We had to search through the Internet for hours. We checked with the Better Business Bureau, but most agencies have a main office in one state

and different country programs in other states. Most unhappy adoptive parents do not report the services to the BBB. Also, we have a right to know who the in-country representative is for a given agency. It should not be considered a secret. Too many agencies hide behind this cloak when they have a less than ethical representative in country.

Good.

There should be specific terminology defining who can provide adoption services. For example, "adoption helpers," "advisors," etc. should either have some type of certification / licensure and malpractice insurance or should not be allowed under law to "assist" with anything related to adoptions.

I strongly agree with the provisions as described for the Suitability of Agencies and Persons to Provide Adoption Services Consistent with the Convention.

There should be a central agency that can supply information on an agency's history of practicing in the field of adoption, like the Better Business Bureau. While the individual states can provide this information sometimes, complaints aren't always reported, so this information needs to be provided to consumers. Agencies need to let prospective parents know how they can access their record of practice.

How would you propose dealing with foreigners assisting in the facilitation of adoption? Also, there should be a graded system for domestic agencies: Certain violations should mean automatic loss of licensing and prosecution; others might lead to fines or suspension of licensing, or publication of the findings in a public place so that prospective clients can find out about it. Sort of a Better Business Bureau for agencies.

**Comments from birth parents:**

There are agencies that are out there trying to stop adult adoptees from gaining knowledge of who they are and where they came from. You don't know the loneliness of being adopted until you have walked in their shoes. We need people to understand that *God* is the Author of Adoption. Moses was an adult adoptee and God gave him a big job to do. If you don't know the story, read your Bible.

Many agencies do not follow through to determine if the actual adoption is finalized, done legally. In my case, my daughter was *sold* for $15,000, never legally adopted, physically and emotionally abused for years, with no accountability on the part of the adoptive parents. The agency did not care, as they got paid. This agency should be held accountable.

## § 96.36 Prohibition on child buying

Exceptional.

Setting fee limits is the only way to really prohibit child buying.

No agency or attorney should be allowed to buy a child for resale. This includes taking custody of children while putting them out for bid to agencies!

Child buying should be punished at all costs. Many U.S. agencies play the "don't ask/don't tell" game with orphanages/facilitators in other countries so they cannot be held responsible for these kinds of happenings.

I feel it is important to carefully preserve the right of attorneys to charge fair market prices for their legitimate services in processing an adoption. It is also important that care for the child during the pregnancy, birth and sometimes lengthy adoption process be a legitimate expense.

This is excellent, but again, it is dependent on the resources committed to oversight and enforcement.

No adoptive parent should ever want the equation of adoption to include child buying, but there are costs that exist to care for the children and birth parents prior to finalization of the pending adoption. There should be a very clear policy that allows the parents to see exactly what "costs" are associated in this area and allow the parents to work with an agency whose policy they are comfortable with.

Any agency which participates in child buying, whether with knowledge or not, should lose its license.

Prebirth and medical expenses of the birthmother should not be allowed under any circumstance. Technically an unborn child is not an "orphan" and therefore should not be eligible for referral until after birth and attempts have been made to place the child in the country of birth. Isn't that the spirit of the Hague? Allowing these expenses to be paid opens the door for coercion and corruption. It takes power away from the birthparent(s) and puts it into the hands of those paying the bills.

Absolutely *no child buying*. Strict controls to ensure that the costs adoptive families are paying are not so exorbitant so they are within reason and acceptable throughout the world. Don't make costs so high that only the wealthy can afford to adopt.

What do you think a private agency is doing? Get rid of agencies and allow open adoption of legally orphaned children. If children were legally cleared and medically cleared there would be no shortage and child buying would automatically go by the wayside. False shortages of available children are created by the fact that the kids are not legally cleared for adoption. The adoption fee should go to the orphanage to legally clear more kids. This is a very important humanitarian issue. These kids might as well be incarcerated if they are not legally cleared and put up for adoption when eligible. Agencies are paying these costs for a few lucky ones and there is a great deal of corruption by the agencies trying to speed things along and lower costs. The culprits are the agencies...*the people who are in the business* are often unethical and that will never change, and the *need* for an agency must be eliminated...so the money is not wasted supporting unethical business practices and can be used to legally clear orphans...and hopefully medically vaccinate them for hepatitis and other diseases prevalent in orphanages.

a) This seems awfully vague. I would like to see tighter controls. Possibly a central organizing authority to verify relinquishments before a child is placed in an adoption-related orphanage. The non-uniformity of the "reasonable payments" by countries opens a can of worms as to what can constitute these reasonable payments. Why is medical care and food considered reasonable in one country when a bag of rice in another is considered a payoff?
b) This will not work. Training employees not to move into "gray" areas is akin to handing teenager keys to the car and telling them not to speed. That is not to say that all

representatives are unethical; rather, it allows an unethical agency to do what they want to do.

I strongly agree with the provisions as described in the Convention for the Prohibition on Child Buying.

Agencies shall let prospective parents know what they do to prevent this problem.

Since we all know it's going on on a de facto basis around the world with the exorbitantly high fees paid...

**Comments from birth parents:**

I feel that buying a child is wrong. But I also think that keeping a child in the System is wrong. All children need someone to love them, and a foster parent sometimes thinks more of the money than the child. Adoption in the United States is one of the largest money-making businesses in the world and if we continue to let these agencies continue, they will own the world of adoption and even the government will not be able to have a say in it. So no to anybody buying a child.

Yes, trafficking in children must stop. My family has been a victim of this practice, in the U.S. We do not have the protection of U.S. courts.

## § 96.37-38 Education and experience requirements for social service personnel

On both sides of the oceans, please—no matter the country.

The most educated person in the world may still not have the common sense they should.

I support these requirements as stated in this proposal.

This is also excellent and if properly overseen and enforced, will drive the amateurs and the liars out of the adoption business and put things back in the hands of qualified professionals.

Even though I understand the need for a college education in social work or related fields, I also feel that the experience that a adoptive parent can bring to an agency in working for that agency can not be overlooked. I feel that the masters degree is a little too high for a supervisor. I totally agree with all the criteria being for those that have anything to do with the writing and recommendations of the adoptive family's home study, but to remove the ability for adoptive families to provide their hands-on experiences in the journey of adoption is a very sad loss for the family in the process of adopting for the first time. What one learns in a book is so very different from being one that experiences the joys and pains of becoming an adoptive family.

All education and experience must be corroborated by the licensing board, as many adoption agencies are mom and pop operations set up by those with no training and no social work skills. Other employees lie. Proof of diplomas and accreditation must be provided before a license is issued.

96.37(a) Narrower definition of "appropriate qualifications" needed. Vagueness allows most anyone to work in adoption. All agency personnel who are involved in placement or referral of children should be required to have at least a bachelor's degree in a social science field. Require CEU's of social workers, monitor the classes that they can take and require certain classes.

Teaching degree or social work degree. College degree required.

96.38-This is good. It needs to be implemented. Too many agencies feel they have completed their job when a child arrives on U.S. soil. The training provided needs to be uniform and consistent throughout the adoption community. Too many agencies do what they can to get a child home and do not have further contact with the child/family. Counseling/education needs to be extended past the time the child gets off of an airplane. All children go through a grieving process and it is the job of the social workers, agencies and families to address and deal with these issues.

Good.

Only licensed clinical social workers should conduct home studies. What is suggested is too many disciplines being involved, some of whom have questionable or *no* credentials *or* training but will gladly jump on board when they realize they can have a piece of the pie. Adoptions are a billion dollars a year industry. Rehab workers and nurses have training in their respective fields and that is where their practice should be limited to. If too many disciplines are involved there will be anarchy and quality will suffer.

I agree with the proposed Education and Experience requirements, as stated.

Education for social service personnel shall include sufficient training on cultural literacy.

Achievement should be published publicly so clients can judge for themselves.

**Comments from birthparents:**

There are certification programs in many states for social service workers. Make such programs mandatory nationwide. This problem is too serious to be approached in a casual manner.

Taught how to be honest with the adoptive parents and adoptees. To encourage open records in the USA. Open adoption is a way to help a birthmother to cope with the feelings of low self-esteem and just knowing that our children are safe and not being abused.

## §96.39 Information disclosure and quality control practices

Orphanage representatives should not be allowed to ask for additional money for any item during the visits of the parents when the parents are most vulnerable. Fees should be set and that's that. If a parent cares to donate to the orphanage goods or money, then it should be done. But on the terms of the adoptive parent.

Adoptive parents should have the fees in writing and terms also in writing before any money is exchanged. Also, there should be a payment plan for anyone who cannot pay the entire fee up front. Our Russian lawyer living here made us pay the entire fee up front. We did finally adopt our child, but if we had been denied then she would have taken all our money

with no hope of us getting anything back. I think this is an inappropriate way of taking advantage of our citizens by foreign citizens.

I fully support subsection 96.39 b(1). However, I would like to see language detailing how the following two scenarios are handled: (1) a family travels with the intent of adopting two children without having identified them before, but, due to dishonesty with the agency, adopts only one; (2) due to dishonesty on the part of an in-country facilitator, a family chooses to change the country from which they intend to adopt, and then proceed to complete an adoption. In my opinion, both scenarios should be counted. Moreover, the regulations should make it clear how such failures are to be counted. On another note, the regulations should also require that the agency disclose the business relationship between the U.S. personnel and the foreign personnel—e.g., whether the foreign staff are merely hired or whether they sit on the agency's board. If the latter, then adoptive families cannot expect the same degree of oversight as in the former case.

#3 "usual costs" is too vague.

I support these requirements as stated in this proposal.

I wish Internet photo listings would be used only for special needs/hard to place children (and that would be defined somewhere). I fear that photo listings are too often used to grab the hearts of prospective parents, who are then "forced" to use an agency that they might know nothing about in order to secure their "dream child."

This is very good but could go even further in requiring a breakdown of the distribution of foreign fees. Section (f) is a problem as it allows Internet photo listings. Photo listings help turn children into merchandise and help unscrupulous service providers bait and trap their victims. If they are not much more severely regulated than they are here, then they should be banned altogether. Too many times, the same child appears listed under multiple agencies. Too many times, the photo listing of a child is used as a bait-and-switch tactic on the part of an adoption service provider, and too many times, a vulnerable family falls in love with a photo on the Internet and becomes blinded to the red flags that arise about the provider who displays the photo.

The more information that is disclosed by an agency that can be verified as accurate and true can only benefit those children waiting for families and those families trying to make the best possible decision when choosing an agency to work with. But there must be a method to insure that the information given is accurate and not just made up by the agency.

In-country fees should be much more clearly defined so parents can see exactly where the money goes.

96.39(b)—This should be given to every person who inquires about an agency. It should be included on the agency's web site and in company literature. This is a good addition to the regs.

Agencies need to make full disclosures of fees involved for the whole adoption from start to finish, what money the agency takes in and what that is used for as well as fees that go to the country the child is from.

Eliminate agencies. They should not be necessary. It is a shady business and should not be necessary to adopt. Agencies are a necessary evil and can never be policed, and should just be eliminated.

96.39a(3) Clients have a right to know who is working on their behalf in country. Do not take this part out!

Good.

I agree with the proposed Information Disclosure and Quality Control Practices, as stated.

All fees shall be broken down in concrete units as much as possible.

**Comments by birth parents:**

Full disclosure is required. The concept of transparency in all transactions must be introduced. The transparency concept is an accounting principle and works well in this situation.

Why should an adoptee have to pay thousands to get their records? They have to pay taxes and they can vote. Why punish them for something that they did not have a say in in the first place? Most adult adoptees don't have the outrageous prices it takes to get their records open in the court. They also have to pay $35 to $100 to get their Non-Id, and if they want to do a search, most agencies' fees are nonrefundable if the search turns up nothing. This is wrong.

## §96.40 Fee policies and procedures

Exceptional.

Under the translations portion, some consideration must be given to the fact that translations can be accomplished over the Internet at little or no expense although when done in Russia can be astronomical in cost. Translations should be allowed through the use of Internet translators in the U.S. or home country of the adopters. The certification of translations and recertification is also an expensive joke. Cultural or not, it has to be stopped. One set of notary seals should be adequate. This is just another moneymaker for those in Russia.

Agencies should refund all money if an adoption falls through because of no fault on the part of the adoptive parent. Agencies now doing business in international adoption threaten to pull the referral of the child if there is any disagreement.

Not bad, however #6, Contributions, concerns me. In Michigan it's illegal to pay "contributions" in adoption.

I support these requirements as stated in this proposal.

Adoption agencies should be required to give a detailed list of what their fees are for. An itemized list should be given out to each applicant. If the agency is on the up and up, they should not have a problem explaining to their customers what the fees are going towards. I have had too many friends ripped off by agencies with very high fees. The people that use them oftentimes have no idea that the fees are way too high.

I like this section. Anything that can be added that makes the money trail more transparent, especially in the foreign country, should be.

This policy could only help demystify the wondering by adoptive families as to where "all the monies go." It also allows families that wish for more/less monies to be in a specific area of their adoption to help in the decision making process of choosing an agency.

Refunds due to agency problems should be automatic.

Most of this section is great. However, program fees need to be broken down so prospective parents know where the majority of their foreign fees are going. Further, if additional fees over $800 are requested at any point, the client should have the right to terminate the contract and receive a full refund from the agency. Many adoptive parents budget closely for an adoption. If the actual price goes up over $800 (when there are other unknowns such as travel costs) this can hinder their ability to complete an adoption.

No lump sum only disclosures. Make sure agencies are required to give a listing of all expenses and why.

Get rid of agencies. Spend the money on an orphanage fee to pay for legal and medical clearance of kids.

96.40-(a)(1) Disclosure of fees needs to be broken down and the agency needs to be fully accountable for any fees over the usual and customary fees for the given country. Again, there are wide variations between agencies and in-country fees for the same country. These need to be itemized. Why should one nonprofit agency charge $16,000 for an adoption when another charges $10,500? This type of thing raises a red flag with me.

Lump sums is fine as long as there is a breakdown of that lump sum. Adoptive families need to know up front how much the adoption will cost without any hidden surprises. Especially if going to a foreign country, so they are not stuck due to lack of cash because they didn't know the extra fees.

I agree with the proposed Fee Policies and Procedures, as stated.

The terms for refunds should be clearly stated.

I agree with all of this. The trouble is, there is no central place or organization that I ever found when I was trying to do a domestic adoption that tells you your rights as a parent. You are in such an emotional, vulnerable position and it is hard to conceive that someone would try to cheat you or lie to you about something so important. Yet, we know now that it happens all the time and very few agencies are well run and organized. I think most agencies are started by nice, well-meaning people with a desire to help children, and because they lack the administrative, organizational and business skills to run the agency well, plus the fact that most agencies are not powerful wealth generators—what you get out of that is a bunch of small, sort of sloppy agencies. And at least the State of Ohio has done nothing about it.

**Comments from birth parents:**

The "lump sum" approach is a catch-all and may allow unethical participants, particularly agencies and attorneys, to skirt the regulations. There should be no "TMI" (too much information) restrictions in this area

This is wrong. We have adoptees and birthmothers that are dying and all these agencies want is that money. If there is something wrong like cancer or any disease that is going to

take a life which a doctor has written on paper, they need to help and not charge anything. You as a nonadoptive person can go get your birth certificate at a charge of no more than $20. Why should an adoptive person have to pay more, once they turn 21 and pay taxes?

## §96.41 Procedures for responding to complaints

I do not believe the above noted clause will be effective. There are so many ways in which an agency can retaliate against an adoptive family, including withholding referrals that may be of interest to the family. Let's face it, adoptive families are more or less at the mercy of the agency with which they work for many international programs. Adoptive families invest so much emotional energy, time, and money in the process, that they will put up with almost anything if it will result in their dream coming true. Regulations cannot force an agency to treat families with respect, to resolve conflicts in a fair way, to provide service in the face of a complaint.

In my opinion, the only way to make the adoption process fairer for families is to provide transparency. Families must have ready access to the information about the complaints filed against an agency, and the accrediting entity's response. For example, an agency should be required to post on a Web site and make readily available the material they send to the accrediting entity each quarter. Public release of this information will allow an individual who has filed a complaint to ascertain that their complaint has been registered with the entity. Moreover, it will provide other families with visibility into what will otherwise be a hidden process.

Agencies should not be allowed to threaten to take the child away from parents. They also should not be allowed to have a clause in the contract stating that clients will pay all of their legal fees if there is a lawsuit.

Looks good, but what's to stop the unethical agencies from just not disclosing the complaints? All adoptive families should be allowed to file a report (good/bad) with a central reporting agency if they wish. Let this be a qc check of the agency's reporting ability.

I support these requirements as stated in this proposal.

Not so sure about this. Does it mean that parents can only complain to the agency? And then the agency is on the honor system to present all of their complaints/resolutions to the accrediting agency? Is there not somewhere separate and central for parents to lodge complaints? If so, that seems necessary to me.

This is very good as well. It might be good to add details about benchmarking and quality standards.

Many parents who have suffered tremendously due to corrupt agencies have no voice and are threatened by their agencies should they go public. I agree that agencies can not take action against legitimate, documented complaints and that they in turn can be liable for lawsuits should they unduly harass clients, who often do not have the resources to pay legal fees.

This is good except that clients/adoptees/birthparents should be able to file a complaint directly with the Complaint Registry rather than with their service provider. There have been numerous accounts of provider abuse and threatening behavior toward clients. Even though this section prohibits retribution, it will not stop providers from issuing verbal threats to

their dissatisfied clients. Therefore the option to bypass the service provider should be allowed.

Ensure client confidentiality for those clients who make complaints, and a tracking method against whatever agencies have complaints.

Get rid of agencies. Make adoption of legally cleared kids easy and open upon arrival in the country.

Complaints should be made to the complaint center and then referred to the agency. Too many agencies blame unhappy outcomes on emotional parents.

Good, but adoptive parents should have the option of filing a complaint without going to their agency first. They should tell the agency they will be filing a complaint but the formal complaint process should not have to start with the agency itself.

As a adoptive parent I should have a right to voice my bad experience with the agency and any government office and not have it pushed to the side. I have seen several families hurt during the adoption process because the agency did not care after they received their money due to them.

I agree with the proposed Procedures for Responding to Complaints and Improving Service Delivery, as stated.

I agree with this section.

On the contrary, complaints should be made public.

Right now, there's no central way to obtain a list of any complaints against an agency. Centralizing it would greatly help parents choose agencies.

**Comments from birthparents:**

Retaliation of any kind must be prohibited.

What has an agency got to fight about? They hold our lives in their hands. They need to understand how we feel and how bad some of our lives were while in unwed mothers homes. We were drugged and told every day that if we searched for our children we would go to jail. How dare they even try to do something to me. We were tricked into giving our children up by telling us that once that child turned 18 they could have their records and would know who gave them up. This was a bald-faced lie. All we want is the *truth*...

## §96.42 Retention, preservation and disclosure of adoption records

Once the adoptive parents are the legal parents they should certainly have all the information that is available on their child. Probably this information should come when the parents are interested in becoming the parents of a child so they can make an appropriate decision on whether to proceed to adopt the child or not.

I support these requirements as stated in this proposal. If anything, I think that adoption records might be preserved even longer.

It doesn't seem to say this explicitly, but it seems necessary that agents (agency employees) working abroad also be required to retain and preserve complete adoption records.

This is good. Anything more that can ensure accuracy of the child's records would be of great importance. Too many children are placed with altered, forged, or falsified histories and this has to stop.

Records should be preserved wherever possible.

How long will records be retained? Where will they be retained? Who will oversee the record retention? If a provider moves or ceases to be involved in adoptions, what will happen to the records? Will adoptive parents/birth parents/adoptees be notified? These are all questions that need to be clarified.

Preservation of adoption record for 100 years.

The child's record and bio parent history must be disclosed.

Records should be kept for a reasonable life expectancy. They should always be available to the child, and both adoptive parents and birth parents.

I agree with the proposed Retention, Preservation and Disclosure of Adoption Records, as stated.

All adoption records shall be made available to the parties involved upon request.

We are working on an international adoption so I can only imagine we are subject to the law of the country. I am not expecting much.

**Comments from birthparents:**

Adoption records are part of Vital Records and must be preserved in the same manner and for the same length of time as natural birth records, be that 100 years, 200 years. Must be the same.

All records should be open to an adult adoptee once they turn 21 years old. They are old enough to make good decisions and most of them don't want to hurt or interfere in their birth parents' lives. They just want to know the *truth* of why they were given up. They also want medical records so it just might save their lives or their own children's lives.

## §96.44-45 Service planning and delivery

All children in adoptive care who are legally free for adoption should be allowed to be adopted. There are orphanages that support the caretakers but the kids are never adopted. Our recent experience was that the children there had never been adopted...and the only reason our child was adopted was that his biobrother was already our son....another issue of not separating siblings when the siblings know that there are other kids in their family...this has caused much strife in our home for the first child who missed his brother tremendously and for the second child who knew he had a brother and is now able to be with him and is missing his friends since there was never an adoption from his orphanage and none of the kids were prepared for the separation. It's as if the children are prisoners of the matrons.

Agencies currently subcontracting their Indian adoptions are not disclosing the use of a very disreputable person to families prior to them signing a contract. When things go sour the agency states it's out of their control. Don't see how this is being addressed.

I support these requirements as stated in this proposal.

This is good, but a little wordy and muddy. Basically, the service provider who holds the contract with the client is the one who is responsible, accountable and liable for the actions of its employees and/or subcontractors here in the USA.

Yes! Accredited agencies should be liable for all agencies/providers they supervise. If clients have a complaint against a supervised provider, to whom do they complain first? The provider they contracted with, the primary provider or Complaint Registry? Who must respond?

The agency needs to be held somewhat accountable to the actions of the facilitator. If the agency does not trust the facilitator, they should not work with her/him. There needs to be some accountability on the agency's part.

I agree with the proposed Service Planning and Delivery, as stated.

The agencies shall supply prospective parents with a list of rights as well as the agency's legal liability contract.

**Comments from birthparents:**

The agencies, be they private or state, are legally liable. They profit financially, they must be held responsible.

I was never given any promises that my child would never come looking for me and they can not prove that I did not want my child to search and find me once she turned 21. I do not think that an agency has to worry, unless they drag their feet during a search and it takes them over three months to find the birth parent and then she is dead. Then they would have a right to complain.

**96-46 Using supervised providers in other countries**

Many folks in Russia are waiting to take the adopters' money. Fees for home stays are astronomical, when hotels are abundant at a much lower cost. Use of trains in lieu of expensive rented cars/drivers which do not get to the destination any faster. The foreign country seems to set the standard for the way they will conduct business. Often this is not positive for the foreign adoptive parents. This should be changed wherein it can be.

Not going to change anything going on currently

I support these requirements as stated in this proposal.

This is definitely a great idea. There is too much under-the-table dealing in some countries and this needs to be stopped.

A step in the right direction for sure! Would love to see that a primary provider had to actually *meet* or interview or get references from a foreign supervised provider. Now that money is on the line for agencies, that will certainly help. But I still think there is nothing

that would stop an agency with contracting with a foreign service provider who can just promise to "deliver the goods."

Again, this is good, but a bit wordy and muddy.

Basically, the service provider who holds the contract with the client is the one who is responsible, accountable and liable for the actions of its employees and/or subcontractors in any foreign countries.

American agencies plead ignorance to corrupt facilitators. This must stop. Any foreign employee should be bound under the same laws as an American employee. Names and experience must be disclosed to parents.

96.46(a)(2) "Solicitation" should be added.
96.46(a)(4) There should be no allowance for "patterns." One strike and they should be out.
96.46(b)(3) No prebirth expenses should be allowed.
96.46(b)(4) Good—this should also be commensurate with the local economy.

Tight controls over employees working in foreign countries with requirements on CEUs, work ethics, background checks, bonding and criminal histories.

96.46a(4) Does this cover a facilitator losing the right to practice in one country, then moving to another country to set up shop? b(3) Who decides what reasonable payment for activities related to adoption proceedings is? c(1) Agencies need to have enough trust in the facilitator that they assume responsibility.

Agencies should be accountable for what their employees/facilitators in the foreign countries do.

This should be done with respect.

I agree with the proposed Using Supervised Providers in Other Countries, as stated.

Well, we know that most of this is ignored anyway. Why else would it cost $22,000 in Kaz fees alone to adopt two children from Kazakhstan, requiring a stay of multiple weeks and usurious pricing on every service you obtain?

**Comments from birthparents:**

Yes, I support these provisions.

I believe that all agencies, whether here in the USA or overseas, should hold to the same rules.

## §96.48 Preparation and training of adoptive parents

Good idea. Not sure most newbie parents will truly believe that love won't be the cure for all things. Agencies should have families available as phone buddies or on-line support that can help the new families when they run into crisis.

I support these requirements wholeheartedly.

I am completely in favor of professional training of adoptive parents so they are fully prepared to handle the myriad of issues internationally adopted children can bring. Again, it is time to rid this industry of the amateurs and profiteers and return it to the professionals. Having parents who have realistic expectations and who know what they are prepared to handle can only help reduce the increasing numbers of disrupted adoptions.

PAPs should have *mandatory* training especially dealing with cultural identity, trauma, loss, and grief. This should be done by qualified, licensed independent social workers with no ties to the agency, and additional fees charged that are *not* paid to the agency but to the social worker to prevent corruption.

This is good. However, who is going to follow up and ensure providers are following through?

Basic classes on child development can be offered. Birth parents are not required by law to attend classes, but making them informational and things that can be used a choice.

No more barriers please! It is already a crime against humanity what adoptive parents have to go through. Do bio parents have to take a class? Do bio parents have to spend 25K to 30K? Stop milking this transaction for all it is worth and then some. Make it easier to give more kids a chance! Lower the costs and barriers and eliminate the need for an agency.

The agencies should be required to prepare the adoptive parent for their experience to include everything one must know to complete the process. There must be education on developmental stages, developmental disabilities, some perspective on current trends when it comes to insurance coverage for mental illness, behavioral issues, etc. There should be basic training regarding common communicable diseases such as Hepatitis B & C, HIV, TB and how those diseases are transmitted and what is considered a positive diagnosis. There should be every effort made to determine what adoptive parents are hoping for in a child, whether their expectations are realistic and how they plan to handle things if their child has more issues then they even anticipated. Families should learn about disruptions, reasons for those and what support services are available.

If we could have children naturally we would not be required by any law to jump through hoops for any to give birth. Look at the foster care system and look close as to why the children are there and not with their birth families. Most of them are abused one way or the other.

I agree with the Preparation and Training of Adoptive Parents, as stated.

Cultural literacy is essential, and is not taught in one evening.

Should be required of all, regardless of what agency or private opportunity, just so somebody can say they had the opportunity to find out about it if they wanted to. On the other hand, the training is not very useful because in reality, a lot of it is cursory, a lot of it is haphazard, many agencies make home videos. At the end of the day, the social workers act like they accomplished something by showing you videos, but you need to get into the nitty gritty of real life before it hits home and you can absorb it. For first-time parents, they need to find another way to present the material —both good and bad. I went through Geauga County, Ohio's 10-week training program and all we heard was the most awful sad stories and saddened but brave parents coming in to tell their stories and show us their damaged kids. I raised my hand at the end of 40 hours of this and said, "Do you have any good news?" Out of 18 couples that sat through 40 hours of that class there was one1 placement that took place in the following two years. That is pathetic and a waste of

valuable resources. The County was too picky about their families and the families were scared off.

**Comments from birth parents:**

Yes, this is important. No exceptions.

All adoptive parents had better be watched very closely. We are finding our children in broken homes and being abused, verbally and mentally. This is not good. We did not give our children up to be raised by someone to abuse them. If it takes more social workers to follow this up, than so be it. Our children were not brought into this world to have to be abused; they were a gift from God to be given to people that could not have children, and if they have problems they need to be dealt with or they do not get our kids.

## §96.49 Provision of medical and social information

*Adoptive parents must receive all medical and social info on family and child.* Agencies must have protocols whereby they ask for needed information.

How can you regulate something that many countries just don't have? Good idea on paper.

I support these requirements as stated in this proposal.

I like this section a lot. It removes time pressures put on clients and allows them time to review medical information on the referral. It needs to be stronger with penalties for intentional omissions and misrepresentations about a child's health and background. For example, in the tragic death of their baby son, Cyril, in their hands at a hotel in Russia while their adoption was in process, it was never disclosed to Daniel and Elizabeth Case that the orphanage from which the child was coming was a home for children with severe neurological disorders and that most of the children there, including Cyril, were the babies of heroin addicts. Their agency, Building Blocks Adoption Services, Inc., should have known and disclosed this fact. Ultimately, the tragedy of Cyril's death is this agency's responsibility.

Information about the child's behavior would be useful to help parents cope with transitioning.

Under this provision, do adoptive parents have the right to request additional information from the provider? Must the provider make a good faith effort to obtain the information requested?

As much if not all medical information on the child as possible, especially if the child is special needs.

Whatever is available. Medical testing prior to adoption is a must for adoptive parents.

The prospective parents should get information on their child if the child is hospitalized prior to the parents coming for the child. They should be allowed to get updates and not be kept in the dark about treatment.

Parents should receive *all* information about the child, not just selected information, and not find out when the child comes home that they have other medical issues beyond the family's ability to care for.

Full medicals that should be translated prior to the court date. Our consulate should require mandatory medical examination of the child *before* the court and should block adoptions of children with suspected mental retardation and communicable diseases because these children, despite the parent's signing of the affidavit of support, *will* end up on public support once their parents pass away. We may not pay for it, but our kids will. Some parents are not prepared to care for the child with major disabilities and would not knowingly adopt such a child. More help is needed to assist adoptive parents in evaluating children's medical and developmental status before they commit to adoption.

In international adoption we need to know everything in regard to the child's health. We are paying for the doctor's visit through the fees sent to the attorney or government until they are placed in our arms forever.

I agree with the Provision of Medical and Social Information, as stated.

Parents shall be allowed to see a photo of the child plus all information available at the time of referral. If there are important questions that are unanswered, the agency should make every effort to acquire the missing information.

Every single shred of information, as if it was their own child.

**Comments from birthparents:**

Yes, medical and social information must be as complete as possible.

If they are *alive, well* and *happy*. We also want to know of any medical problem or in case a near death accident happens. How would you feel if your son or daughter was over in Iraq fighting for you and you were not allowed to know if they were alive and coming home in one piece? We all should have the same rights as an adoptive parent.

## §96.50-51 Post adoption services

Standards made after a couple has adopted should not affect those who adopted before the standard was set.

Nice idea, but many families are not adopting from their own state.

I support these requirements as stated in this proposal.

This is good also. Again, it restores professionalism and will help reduce disruptions or even greater tragedies such as the death or killing of adoptees at the hands of their parents, which has occurred too frequently.

Agencies *must* provide mandated counseling and classes to deal with the issues stated in section 96.48. Parents are often in shock about their children's behavior and cause even more damage.

If an adoption is disrupted, what becomes of the records? Will disruption records be added to the original adoption records for retention? How will this be achieved?

Should be state mandated and agency specific, if the agency deals with international adoption or domestic only.

Eliminate agencies. After they get your money, very little service is provided! Make do-it-yourself open adoption available!

Good.

Home visits for one year. Assistance with locating services if child has issues. Assistance with locating respite care, and finally assistance if parents have no choice but to disrupt.

I agree with the Post Adoption Services, as stated.

**Comments from birthparents:**

Yes.

Open records to all triad members, adoptee, birth mothers, fathers, aunts, siblings, grandparents, at the age of 21.

## §96.69-72 Filing and review of complaints

Who are the accrediting entities to be? Federal, international or private ? How will they be monitored? Will costs be standardized/controlled ? How much of the cost will be passed down to the families who now most times struggle with the fees of adoption?

Well written. Still dependent on agencies wanting to deal with issues after the adoption is completed.

I support these requirements as stated in this proposal.

Who the accrediting entities are and the timeliness of the review of complaints will determine if this works or not.

This should be even stronger. Agencies currently have few fears that they will be subject to complaints.

The Complaint Registry is a great concept. A complaint should not have to be filed with the primary provider first. This should be optional. Who will operate the Registry? How will records be maintained?

96.70(b)(3) Every complaint should be forwarded to the accrediting entity for review.

Take out the middlemen! Stop trying to police something that is fraught with inherent problems and cannot be policed. Eliminate the need for an agency. Give kids a chance. Focus on legally clearing eligible kids as available for adoption! The system is crazy! Needs total overhaul. No more regulation and control. Throw out the old system. The humanitarian rights of children are being seriously violated... hundreds and thousands of them!

Good.

I agree with the Filing and Review of Complaints, as stated.

**Comments from birthparents:**

There must also be a documentation of such complaints. A public history must be maintained.

Take all complaints with an open heart. Contact the complainee and interview all interested parties. Just open your heart.

## §96.83-88 Suspension or cancellation of accreditation

Love to see this in place and working.

I support these requirements as stated in this proposal.

Timeliness is the important key here. The complaint process and its culmination cannot drag on for long time periods as it will negatively impact the adoptee and his new family.

Agencies need to be inspected more often to be sure they are complying with regulations.

If these agencies cross the line, they should all lose their licenses.

Why in the world can the provider who loses accreditation apply to be reinstated? We are talking about the lives of children!

Eliminate need for agencies. Need to streamline easy do-it-yourself adoption for legally available kids in countries that allow international adoption.

There needs to be a centralized database of all accredited agencies as well as information whether agency license is active or if it has been suspended. All of this must be available on the Internet.

I agree with the Suspension or Cancellation of Accreditation by the Secretary, as stated.

I think that agencies should also have their accreditation cancelled if they interfere in an adoption that does not involve one of their current clients. We tried to adopt a boy from Russia, but the agency that had hosted him in the U.S. for the summer told us that we wouldn't pass a home study. When we used a Russian attorney and went independent (easily obtaining a home study too), the agency wrote a letter to the Department of Education in the town and the city judge saying why we should not be allowed to adopt. We were rejected in court. We have since successfully passed two more home studies, so it seems the agency's comments were not correct. It seems that agencies that have monetary arrangements with certain orphanages and officials would be able to block adoptions of parents not using their own agency, unless the rule is changed.

**Comments by birthparents:**

Yes.

They need to have new legislation to open records to adult adoptees. We are not talking about a 3 year old child here. We are talking about someone that just might have to adopt a child and they also pay this hard earned money to do so. They need to control the price they get for the adoptions.

## §96.95-111 Regulations for temporary accreditation

Excellent provision...these smaller agencies do very good work and truly care for the children as did our first agency...but were not a "mill" atmosphere, more a personalized service for which we will always be very, very indebted for the creation of our family. Creation of many smaller agencies where there are not even 50 adoptions each month would be more beneficial to the parents and to their new children. Maybe the smaller agencies could reach out to more remote areas to help us find those orphanages which are hidden from the public eye and from which children will be released onto the economy of the country without training or having ever experienced a family's love.

*Watch the small agencies more closely.*

I support these requirements as stated in this proposal.

There should be greater requirements for agencies applying for temporary accreditation. They should have adequate adoption experience. It would be good to require them to have been involved in adoption for at least five years prior to application for temporary accreditation.

Temporary accreditation for a year, not two years.

Get rid of the need for agencies. Need do-it-yourself easy open adoption for legally available kids.

I agree with the Regulations for Temporary Accreditation for Smaller Agencies, as stated.

**Comments from birthparents:**

No, this is just giving them what they want, and that is more money from the Federal Government. They should be able to give a child a good home, even if it is a child with AIDS, there are people that will make that child feel loved and safe for whatever time they have. I don't care if they are *gay* or not. Just give that child a home and get them out of the money-making system.

## §98.2 Preservation of Convention records

I support these requirements as stated in this proposal.

Preservation of these records is essential in protecting the rights of the adoptee. The child should have all the rights and privileges and responsibilities as any child raised by birthparents. This vital link must not be disturbed.

Preservation of adoption records for 100 years.

I agree with the Preservation of Convention Records, as stated.

**Comments from birthparents:**

I believe that all adoption records should be open to all adult adoptees.

## Other comments:

DNA authorizations should be easier for attorneys to obtain.

This is an amazing task which for the children in orphanages' sake I hope doesn't take too long to implement. There is so much going on overseas with the adoption processes that these rules don't seem to touch on. Such as the single controlling MOE representative in an oblast southwest of Moscow who manages every adoption himself, does not relegate to any underling in his absence, has the entire MOE scared to act in his absence, even his higher ups, will not act unless adequately compensated...what is to become of these human roadblocks to adoption? What is to become of the orphanage matrons whose children in care are hidden in remote settlements away from the eye of potential adopters/agencies who do not want to give up their charges under any circumstance? What about the unspoken structure established years ago under different social/cultural conditions which have persons who still act and react as they did under the old regimes ? What about "Blat"? Why is everyone made to be scared about what should be a beautiful experience...that of having a family...? Why can't it just be a process which has a good outcome?
Thank you for your dedication to the children of the world...our sons are gifts from God who have found their future in our hands.

Agencies are making their money on giving out referrals. They then do not care if adoption ever gets finalized because they already have their money.

The BCIS is untrained and unprofessional and is not competent to approve adoptive parents. Professionals have approved several families and if a complaint is made about a BCIS employee then the family is denied. This happened to us. This is what is unethical. We now have $20,000 invested in Guatemala with no approval and have not heard anything on our appeal for over seven months. BCIS needs to stay out of this process unless licensed social workers or attorneys are hired.

I believe that the countries charging enormous country fees should be investigated. Countries charging a $15,000 fee is outrageous! The fact that an attorney in a foreign county can get away with that is ridiculous! We have seen the China program grow by leaps and bounds and new orphanages being built and they only charge a $3,000 orphanage fee. So why are other countries charging five times that? It is not right!

I made my comments with only understanding a little of the Hague Act, but I wanted to comment to show that I support the Acts. I am an international adoptive parent.